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Vol 1892

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

San Francisco Law Library

JAMES S. McKNIGHT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee,

Transcript of Record.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

FILED

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PAUL P. O'BRIEN,

CLERK

Parker, Stone & Baird Co., Law Printers, Los Angeles.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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United States Attorney,

CHARLES H. CARR, Esq.,

Assistant United States Attorney,

Federal Building,

Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 11654-M
)
JAMES S. McKNIGHT, et al,)
)
Defendants.)

STATEMENT OF DOCKET ENTRIES UNDER RULE IV,

SUPREME COURT OF THE UNITED STATES

1. Indictment for violation of Sections 37 and 212, Federal Penal Code (18 USC 88 and 335), filed September 6, 1933.

2. Defendant arraigned, September 11, 1933.

3. Plea in abatement filed September 11, 1933.
   Plea in abatement overruled September 21, 1933.
   Demurrer to indictment filed September 22, 1933.
   Demurrer to indictment overruled September 27, 1933.

4. Trial by Jury, December 14, 18, and 19, 1934.

5. Verdict of Guilty on all four of the counts of the indictment, December 19, 1934.

6. Sentence of defendant: on 1st count, be imprisoned in Los Angeles County Jail sixty (60) days, and pay unto the United States a fine of $500.00 and stand committed to said jail until payment of said fine, and on the 2d, 3d, and 4th counts, be imprisoned in Los Angeles County Jail for a term of six (6) months on each count, concurrently, and execution of sentence on said 2d, 3d, and 4th counts suspended for a period of two years on probationary conditions.

Attest DEC 21 1934

R. S. Zimmerman, Clerk U. S. District Court, Southern District of California

By Edmund L. Smith Deputy

No. 11654 - M Filed

Viol: Sections 37 and 212 Federal Penal Code (18 USC 88 and 335).

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

At a stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Central Division of the Southern District of California on the first Monday of February in the year of our Lord one thousand nine hundred thirty-three:

The grand jurors for the United States of America, impaneled and sworn in the Central Division of the Southern District of California, and inquiring for the Southern District of California, upon their oath present:

That

JAMES S. McKNIGHT,
BLEY STEIN, and
ROBERT E. TAYLOR,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: prior to the dates of the commission of the overt acts hereinafter set forth, and continuously thereafter to and including the date of finding and presentation of this indictment, in the County of Los Angeles, state, division and district afore-

said, and within the jurisdiction of the United States and of this Honorable Court, did then and there knowingly, wilfully, unlawfully, corruptly and feloniously conspire, combine, confederate, arrange and agree together and with each other and with Lee Ringer, hereinafter called co-conspirator, but not a defendant herein, and with divers other persons whose names are to the grand jurors unknown, to commit an offense against the United States of America and the laws thereof, the offense being to deposit and cause to be deposited in the United States mails for transmission thereby to other persons postal cards and post cards upon which is delineated, written or printed epithets, terms and language that is libelous, scurrilous and defamatory and that is calculated by the terms and manner and style of display and obviously intended to reflect injuriously upon the character and conduct of another, to-wit: one Stephen W. Cunningham, in violation of Section 335, Title 18 United States Code.

And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present that at the hereinafter stated times, in pursuance of, and in furtherance of, in execution of, and for the purpose of carrying out and to effect the object, design and purposes of said conspiracy, combination, confederation and agreement aforesaid, the hereinafter named defendants did commit the following overt acts at Los Angeles, County of Los Angeles, state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court:

1. That on or about the 10th day of May, 1933, at Los Angeles, California, defendant, JAMES S. McKNIGHT, had a conversation with defendant BLEY STEIN concerning the subject matter to be sent through the mails on postal cards.

2. That on or about the 12th day of May, 1933, at Los Angeles, California, defendants, JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR opened and caused to be opened a bank account at the Seaboard National Bank, Wilshire and La Brea Branch, in the name of L. Simmons.

3. That on or about the 14th day of May, 1933, at Los Angeles, California, defendants JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR caused to be purchased about thirty thousand (30,000) United States Government postal cards which postal cards carried prepaid postage.

4. That on or about the 15th day of May, 1933, JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR, at Los Angeles, California, addressed and caused to be addressed said postal cards.

5. That on or about the 22nd day of May, 1933, at Los Angeles, California, defendants JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR mailed and caused to be mailed great numbers of postal cards, on each of which was Printed the following:

"DEFEAT CUNNINGHAM FOR COUNCIL

WE PROTEST Many people have been misinformed .... and believe that Stephen W. Cunningham, candidate for council from the third district, is the "Graduate Manager" of the University of California at Los Angeles. In view of the fact that he is, in truth, NOT a graduate of our University and since his gross mismanagement of finances there has led to his dismissal, we believe that this erroneous impression should be corrected.

ALUMNI PROTEST LEAGUE.
University of California at Los Angeles
215 West 7th Street"

6. That on or about the 15th day of May, 1933, at Los Angeles, California, defendants JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR purchased and caused to be purchased about thirty thousand (30,000) cards.

7. That on or about the 17th day of May, 1933, at Los Angeles, California, defendants JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR secured and caused to be secured a permit to mail third class matter in the name of the Alumni Protest League.

8. That on or about the 15th day of May, 1933, at Los Angeles, California, defendants JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR had said cards printed in accordance with the regulations of the Post Office Department for mailing as permit matter and with the following message printed on the reverse side thereof:

"DEFEAT CUNNINGHAM FOR COUNCIL

His only qualification as candidate appears to be his association with the University of California at Los Angeles

WE PROTEST Inasmuch as that association has not been a happy one, we are appealing to you to defeat this man who depleted our student body finances, and now seeks public office! U. C. L. A.

MISMANAGER CUNNINGHAM

HERE ARE THE FACTS:

7,000 U. C. L. A. STUDENTS
$126,000 DEFICIT

Cunningham was dismissed as manager of student affairs when the student body found itself without funds . . . and facing a deficit of $126,000.00.

IT TOOK 9 YEARS
TO DO IT
GOD HELP THE
TAXPAYERS IF
HE'S ELECTED
COUNCILMAN

We object to his attempt and that of his political backers to capitalize upon the dignity and good name of U. C. L. A.

ALUMNI PROTEST LEAGUE
University of California at Los Angeles"

9. That on or about the 16th day of May, 1933, at Los Angeles, California, defendants JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR addressed and caused to be addressed cards prepared for mailing as post cards.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR, hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 22nd day of May, 1933, at Los Angeles, County of Los Angeles, within the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously deposit and cause to be deposited for mailing and delivery in the Post Office Establishment of the United States, a certain postal card with the proper postage thereon prepaid, addressed to "Mrs. S. J. Thompson, 423 North Spaulding Avenue, City", which said postal card, when so deposited and caused to be deposited as aforesaid, had delineated, written and printed thereon epithets, terms and language that was libelous, scurrilous and defamatory of and concerning one Stephen W. Cunningham, and which was calculated by the terms and manner and style of display to reflect injuriously upon the character and conduct of said Stephen W. Cunningham, and which was intended to reflect injuriously upon the character and conduct of said Stephen W. Cunningham, which said matter delineated, printed

and written upon the said postal card was in words and figures following, to-wit:

"DEFEAT CUNNINGHAM FOR COUNCIL

WE PROTEST Many people have been misinformed ... and believe that Stephen W. Cunningham, candidate for council from the third district, is the "Graduate Manager" of the University of California at Los Angeles.

"In view of the fact that he is, in truth, NOT a graduate of our University and since his gross mis-management of finances there has led to his dismissal, we believe that this erroneous impression should be corrected.

ALUMNI PROTEST LEAGUE
University of California at Los Angeles
215 West 7th Street

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR, hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 22nd day of May, 1933, at Los Angeles, County of Los Angeles, within the state, division and district aforesaid, and within the jurisdiction of the

United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously deposit and cause to be deposited for mailing and delivery in the Post Office Establishment of the United States, a certain postal card with the proper postage thereon prepaid, addressed to "Mrs. J. L. Parker, 1319 Holmsby Avenue, City", which said postal card, when so deposited and caused to be deposited as aforesaid, had delineated, written and printed thereon epithets, terms and language that was libelous, scurrilous and defamatory of and concerning one Stephen W. Cunningham, and which was calculated by the terms and manner and style of display to reflect injuriously upon the character and conduct of said Stephen W. Cunningham, and which was intended to reflect injuriously upon the character and conduct of said Stephen W. Cunningham, which said matter delineated, printed and written upon the said postal card was in words and figures following, to-wit:

"DEFEAT CUNNINGHAM FOR COUNCIL

WE PROTEST — Many people have been misinformed ..... and believe that Stephen W. Cunningham, candidate for council from the third district, is the "Graduate Manager" of the University of California at Los Angeles.

"In view of the fact that he is, in truth, NOT a graduate of our University and since his gross mis-management of finances there has led to his dismissal, we believe that this erroneous impression should be corrected.

ALUMNI PROTEST LEAGUE,
University of California at Los Angeles
215 West 7th Street."

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR, hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 22nd day of May, 1933, at Los Angeles, County of Los Angeles, within the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court did knowingly, wilfully, unlawfully and feloniously deposit and cause to be deposited for mailing and delivery in the Post Office Establishment of the United States, a certain postal card with the proper postage thereon prepaid, addressed to "Mrs. A. M. Meinell, 1628 Federal Avenue, City", which said postal card, when so deposited and caused to be deposited as aforesaid, had delineated, written and printed thereon epithets, terms and language that was libelous, scurrilous and defamatory of and concerning one Stephen W. Cunningham, and which was calculated by the terms and manner and style of display to reflect injuriously upon the character and conduct of said Stephen W. Cun-

ningham, and which was intended to reflect injuriously upon the character and conduct of said Stephen W. Cunningham, which said matter delineated, printed and written upon the said postal card was in words and figures following, to-wit:

"DEFEAT CUNNINGHAM FOR COUNCIL

WE PROTEST Many people have been misinformed . . . . and believe that Stephen W. Cunningham, candidate for council from the third district, is the "Graduate Manager" of the University of California at Los Angeles.

"In view of the fact that he is, in truth, NOT a graduate of our University and since his gross mis-management of finances there has led to his dismissal, we believe that this erroneous impression should be corrected.

ALUMNI PROTEST LEAGUE.
University of California at Los Angeles
215 West 7th Street

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That JAMES S. McKNIGHT, BLEY STEIN and ROBERT E. TAYLOR, hereinafter called the defend-

ants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 22nd day of May, 1933, at Los Angeles, County of Los Angeles, within the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously deposit and cause to be deposited for mailing and delivery in the Post Office Establishment of the United States, a certain postal card with the proper postage thereon prepaid, addressed to "West Eichen, 840 South Bedford Street, City" which said postal card, when so deposited and caused to be deposited as aforesaid, had delineated, written and printed thereon epithets, terms and language that was libelous, scurrilous and defamatory of and concerning one Stephen W. Cunningham, and which was calculated by the terms and manner and style of display to reflect injuriously upon the character and conduct of said Stephen W. Cunningham, which said matter delineated, printed and written upon the said postal card was in words and figures following, to-wit:

"DEFEAT CUNNINGHAM FOR COUNCIL

WE PROTEST Many people have been misinformed . . . . and believe that Stephen W. Cunningham, candidate for council from the third district, is the "Graduate Manager" of the University of California at Los Angeles.

In view of the fact that he is, in truth, NOT a graduate of our University and since his gross mis-management of finances there has led to his dismissal, we believe that this erroneous impression should be corrected.

ALUMNI PROTEST LEAGUE
University of California at Los Angeles
215 West 7th Street

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

PEIRSON M. HALL
UNITED STATES ATTORNEY
Wm. Fleet Palmer
ASSISTANT UNITED STATES ATTORNEY

[Endorsed]: A true bill. Chas. Byler, Foreman. Filed Sep. 6-1933 R. S. Zimmerman, R. S. Zimmerman, Clerk.

[Title of Court and Cause.]

DEMURRER

And the said James S. McKnight and Robert E. Taylor, by Otto Christensen, their attorney for the especial purpose of presenting their demurrer, come into court here, and having heard the indictment in the above entitled cause read, say that the indictment, and each and every count thereof, and the matters therein contained in the manner and form as the same are stated and set forth therein, are not sufficient in law, and that they, the said James S. McKnight and Robert E. Taylor, are not bound by the law of the land to answer the same, and this they are ready to verify.

WHEREFORE, for want of sufficient indictment in this behalf, the said defendants James S. McKnight and Robert E. Taylor, and each of them, pray judgment that by the court here they, and each of them, may be dismissed and discharged from the premises in the said indictment specified.

And the said James S. McKnight and Robert E. Taylor assign the following grounds of demurrer to said indictment, and to the several counts thereof, and to each and every averment therein that purports to charge an offense against the United State to-wit:

1. That the said indictment and each count thereof does not state facts sufficient to charge the said defendants, or either of them,

(a) With having committed any crime or offense against the United States of America;

(b) The matters and things alleged in each and every count of said indictment do not constitute an offense against the laws of the United States of America.

2. That the said indictment, and each and every count thereof, in the manner and form as the same are therein set forth and stated, is not sufficient at law to constitute a public offense against the United States, under the provisions of Title 18, Sec. 335, U. S. C., or under the provisions of Title 18, Sec. 88, U. S. C., in that:

The matters therein alleged to have been deposited for mailing or delivery are not upon their face libelous, scurrilous, defamatory and calculated to and obviously intended to reflect injuriously upon the character and conduct of the said Stephen W. Cunningham.

3. That the said indictment, and each and every count thereof, is double and multifarious and presents several separate and distinct alleged offenses in one and the same indictment, and each of said counts.

4. That said defendants are not in or by said indictment, or in any count thereof, informed of the nature and cause of the accusation against them, or either of them, or thereby given reasonable notice of the specific charges against them, or either of them, whereby they, or either of them, may properly prepare their defense; that the prosecution thereunder is in violation of, and repugnant to, the provisions of the Sixth Amendment to the Constitution of the United States.

5. That the allegations in each and every count of the indictment are so general, vague and indefinite as not to inform the defendants, or either of them, of the nature and cause of the accusations made therein, proof of the

ultimate acts, matters or things to be offered in evidence in support of said accusations, or to safeguard said defendants, or either of them, against a second prosecution for the same offense.

6. That said first count thereof, and the matters therein contained, in the manner and form as the same are therein set forth and stated, are insufficient and bad in law, in that said count fails to allege, in accordance with the provisions of said Sec. 335, Title 18 U. S. C., that the "postal cards and postcards" were deposited in the United States Mails "for mailing or delivery".

7. That said first count thereof, and the matters therein contained, in the manner and form as the same are therein set forth and stated, are insufficient and bad in law, in that said count I charges the object of the conspiracy to be the depositing of "postal cards and postcards" in the United States Mails upon which appeared prohibited matter, but failing to allege that said "postal card and postcard" were not enclosed in an envelope.

8. That said Count I is bad and insufficient in law, in that said Sec. 335, Title 18, U. S. C. does not prohibit the mailing of "postcards" containing prohibited matter unless said "postcard" is exposed and/or unenclosed in an envolope, and said Count fails to allege that the "postcards" were deposited, and that it was the object of said conspiracy to deposit "postcards" containing prohibited matter for mailing or delivery unenclosed in envelopes.

9. That said first count of said indictment is duplicitous in this, to-wit:

(a) Said count alleges therein, and it is not separately stated, four separate offenses against the United States, to-wit:

1. The offense of depositing in the United States mails for transmission postal cards upon which is delineated or printed terms or language that is libelous.

2. The offense of depositing in the United States mails for transmission postal cards upon which is delineated, written or printed terms and language that is scurrilous.

3. The offense of depositing in the United States mails for transmission postal cards upon which is delineated, written or printed terms and language that is defamatory.

4. The offense of depositing in the United States mails for transmission postal cards upon which is delineated, written or printed terms and language that is calculated by the terms and manner and style of display and obviously intended to reflect injuriously upon the character and conduct of another.

(b) The said count one alleges and does not separately state, in addition to the foregoing, two distinct offenses against the United States, to-wit, the offense of depositing in the United States mail for transmission alleged unmailable matter and the offense of causing to be deposited in the the United States mails for transmission unmailable matter.

(c) In addition to the foregoing, said count one alleges two additional, separate offenses, and they are not separately stated, to-wit:

1. The depositing in the United States mails for transmission, etc., postal cards;

2. The depositing in the United States mails for transmission, etc., post cards.

10. The first count of said indictment is bad and insufficient in law in that it is duplicitous, because it charges several distinct conspiracies, to-wit:

(a) It charges a conspiracy to commit an offense by depositing for transmission postal cards upon which was delineated, etc., unmailable matters.

(b) It charges, and does not separately state, a conspiracy to commit an offense by depositing in the United States mails post cards upon which is delineated, etc., unmailable matter, etc.

(c) It charges a conspiracy without separately stating it, to commit an offense by depositing for transmission in the mails a postal card upon which is delineated, etc. matter that was scurrilous.

(d) It charges a conspiracy without separately stating it, to commit an offense by depositing for transmission in the mails a postal card upon which is delineated, etc., matter that was libelous.

(e) It charges a conspiracy without separately stating it, to commit an offense by depositing for transmission in the mails a postal card upon which is delineated, etc., matter that is defamatory.

(f) It charges a conspiracy, without separately stating it, to commit an offense by depositing for transmission in the mails a postal card upon which is delineated, etc., matter that is calculated by the terms and manner and style of display and obviously intended to reflect injuriously upon the character and conduct of another.

11. The said first count of said indictment is so uncertain, indefinite, ambiguous and insufficient in its allegations whereby said defendants herein in or by said count

thereof are not informed of the nature and character of the accusations against them, or thereby given reasonable notice of the specific charges against them whereby they may properly prepare a defense in this matter.

(a) It cannot be ascertained from said count one whether these defendants are accused of a conspiracy to commit an offense of depositing in the United States mails postal cards upon which there was delineated, written, etc., unmailable matter, or whether these defendants are charged with a conspiracy to commit an offense by depositing post cards upon which there is delineated written, etc., matter that *it* is unmailiable.

(b) It cannot be ascertained therefrom whether these defendants are charged with a conspiracy to deposit in the United States mails certain matter, or whether they are charged with a conspiracy to cause to be deposited in the United States mails certain matter.

(c) It is alleged therein, page 2, lines 1 to 12, that the object of the conspiracy, with which these defendants are charged was to commit an offense against the United States of America, the offense being to deposit, etc., in the United States mails certain postal cards upon which IS delineated, written, etc., matter that was unmailable, whereas, it is alleged on page 3, lines 8 to 12, that the defendants did mail certain postal cards on each of which WAS printed certain matters alleged to be unmailable, by reason whereof, these defendants cannot ascertain if they are charged with a conspiracy of combining to thereafter deposit cards in the mails upon which is delineated the matters alleged to be unmailable or whether they are charged with a conspiracy in having deposited in

the mails postal cards upon which there was said matters alleged to be unmailable.

12. That Counts II, III, IV and V of said indictment are bad and insufficient in law, because each of said counts, by their terms and allegations, submit the issue of the intent of the defendants in the mailing of the said alleged postal cards, as set forth in each of said counts, "to reflect injuriously upon the character and conduct" of Stephen W. Cunningham as one of fact and not of law.

13. That Counts II, III, IV and V of said indictment are bad and insufficient in law, because each of said counts fails to charge therein that said "postal cards" were deposited in the United States mails and that the allegation that the same were deposited in the Post Office establishment is insufficient in law.

14. That said second, third, fourth and fifth counts are duplicitous in this, to-wit:

(a) There is alleged therein an offense of depositing for mailing and delivery a certain postal card which had delineated, etc., thereon terms and language that was libelous.

(b) There is charged therein and not separately stated, the offense of depositing for mailing and the separate offense of causing to be deposited for mailing postal cards containing unmailable matter.

(c) There is alleged therein and not separately stated the offense of depositing a postal card having delineated, etc., thereon terms and language that was scurrilous.

(d) there is alleged therein and not separately stated the offense of depositing a postal card having delineated, etc. thereon terms and language that was defamatory.

(e) There is alleged therein and not separately stated the offense of depositing a postal card having delineated, etc., thereon terms and language that was calculated by the terms and manner and style of display to reflect injuriously upon the character and conduct of Stephen W. Cunningham and which was intended to reflect injuriously, etc.

Otto Christensen
Attorney for defendants James S. McKnight
and Robert E. Taylor

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES.)

OTTO CHRISTENSEN, being first duly sworn, deposes and says: That he is the attorney for the defendants named in the foregoing demurrer; that he has read the same and knows the contents thereof; that he believes the same to be meritorious and well founded in law, and that the same is interposed in good faith and not for any purpose of delay.

Otto Christensen

SUBSCRIBED and sworn to before me this 22nd day of September, 1933.

[Seal] Alvina Sawyer
Notary Public in and for said County and State.

POINTS AND AUTHORITIES

1. A conspiracy is merged in a substantive offense shown upon the face of the indictment.

U. S. v. Fisher, 245 Fed. 477

In re Milsen, 131 U. S.

2. The matter as to whether or not the card is within the section may be raised by demurrer.

U. S. v. Davidson, 244 Fed. 523

U. S. v. Davis, 38 Fed. 326

3. The language must be clearly and per se within the Statute.

U. S. v. Lamkin, 73 Fed. 451

In re Barber, 75 Fed. 980

4. The card is not within the section.

Warren v. U. S., 183 Fed. 718

In re Barber, 75 Fed. 980

U. S. v. Jarvis, 59 Fed. 357

[Endorsed]: Filed Sep. 22, 1933. R. S. Zimmerman, Clerk By Thomas Madden, Deputy Clerk.

At a stated term, to wit: The September Term, A. D. 1933, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 27th day of September in the year of our Lord one thousand nine hundred and thirty-three.

Present:

The Honorable: Paul J. McCormick, District Judge.

UNITED STATES OF AMERICA, Plaintiff,
vs.
JAMES S. McKNIGHT et al., Defendants.
No. 11654-M,Crim.

This cause coming on for hearing on Demurrers of defendants herein, James S. McKnight, Isidore Bley Stein and Roy E. Taylor, who are present in court; Clyde Thomas, Assistant U. S. Attorney, appearing for the Government; Otto Christensen, Esq., appearing for defendants McKnight and Taylor; Alfred Gitelson and Arthur Stollmack, Esqs., appearing for defendant Stein;

At the hour of 10 o'clock a. m., both sides answering ready, it is ordered that the hearing proceed; whereupon, Attorney Christensen argues in support of Demurrers of his clients; at 11:15 o'clock a. m. Attorney Gittelson argues in support of Demurrer of defendant Stein; Attorney Thomas argues in opposition to Demurrers of defendants; at 11:50 o'clock a. m. the cause is ordered continued to 2 o'clock p. m. for further argument;

Court reconvening in this cause at 2:05 o'clock p. m., all being present as before, Attorney Stollmack argues on behalf of the defendants in closing, and

It is ordered that Demurrers of all defendants are overruled, with exceptions noted; whereupon, each defendant now enters his plea of Not Guilty, and the cause is ordered continued to the January calendar for setting for trial.

At a stated term, to wit: The September Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 19th day of December in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable Paul J. McCormick, District Judge.

United States of America,)
Plaintiff,)
vs.) No. 11,654-M, Crim.
James S. McKnight et al.,)
Defendants)

This cause coming on for further proceedings on trial as to defendants James S. McKnight and Roy E. Taylor; H. L. Dickson, Esq., Assistant U. S. Attorney, appearing for the Government; Mark F. Jones and Frank Shoemaker, Esqs., appearing for defendant McKnight, who is present; E. M. Smuckler, Esq., appearing for defendant

Taylor, who is present; G. F. Summers being present as court reporter; and the jury being present, at the hour of 10:15 a. m. it is ordered that the trial proceed, whereupon,

Roy E. Taylor is called, sworn and testifies on direct examination by Attorney Smuckler, is cross-examined by Attorney Dickson and by M. Jones, Esq.;

C. E. Webster is called, sworn and testifies on direct examination by Attorney Smuckler, is cross-examined by Attorney Dickson, and

At the hour of 10:40 a. m. defendant Taylor rests; and defendant McKnight rests; and the Government rests; whereupon

Attorney Jones renews motions of yesterday, which are denied and exception noted; and Attorney Dickson thereupon argues to the jury on behalf of the Government;

At the hour of eleven a. m. recess is declared, the jury being admonished;

It is ordered that further proceedings as to defendant Isidore Bley Stein, who is present, be continued to December 20, 1934, ten o'clock a. m., pursuant to motion of B. W. Vinetz, Esq., counsel for defendant Stein;

Court reconvening at 11:10 o'clock a. m., the jury being present and others being present as before:

Attorney Smuckler argues to the jury in behalf of defendant Taylor; at 11:20 a. m. Attorney Jones argues to the jury in behalf of defendant McKnight; at 11:50 a. m.

Attorney Dickson closes argument in behalf of the Government; at twelve o'clock noon the Court instructs the jury on the law of the case, certain exceptions to the charge being taken by Attorney Jones; at 12:45 p. m. Bailiff Floyd S. Kearns is sworn to care for the jury during their deliberations, and they now retire so to do; and it is ordered that requested instructions as given and refused be filed: whereupon, at the hour of 12:50 p. m. recess is declared in this case, and it is ordered that the jury be taken to lunch at the expense of the United States in custody of two Bailiffs, Claude J. Harris being sworn as additional Bailiff;

Court reconvening at 3:45 p. m., the jury return into court, all being present as before except Attorney Jones, and A. Wahlberg now acting as court reporter; Attorney Jones' presence is waived by defendant McKnight, whereupon, the Court now further instructs the jury at their request, and it is ordered that memorandum request by the jury be filed, the jury again retiring at 3:50 o'clock p. m. to deliberate further;

At the hour of 4:25 p. m. the jury returned into court, all being present as before except that J. W. La Pointe is now acting as court reporter and Attorney Jones is still absent: the presence of Attorney Jones is waived by defendant McKnight, whereupon, the jury present their verdict of Guilty on four counts as to defendant McKnight, and Not Guilty as to defendant Taylor, which is read by the Clerk and ordered filed and entered: said verdict being as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

UNITED STATES OF AMERICA, Plaintiff, vs. JAMES S. McKNIGHT and ROY E. TAYLOR, charged as Robert E. Taylor, Defendants. No. 11,654-M Crim. VERDICT.

We, the jury in the above entitled cause find the defendant, James S. McKnight, Guilty as charged in the 1st count of the Indictment,

and Guilty as charged in the 2nd count of the Indictment, and Guilty as charged in the 3rd count of the Indictment, and Guilty as charged in the 4th count of the Indictment, and find the defendant, Roy E. Taylor, charged as Robert E. Taylor, Not Guilty as charged in the 1st count of the Indictment, and Not Guilty as charged in the 2nd count of the Indictment, and Not Guilty as charged in the 3rd count of the Indictment, and Not Guilty as charged in the 4th count of the Indictment.

Dated, Los Angeles, Calif., December 19, 1934.

Fred O. Bunnell
Foreman of the Jury.

It is ordered that defendant Taylor be discharged and that his bond, as filed in case No. 11488-M Crim., be exonerated. The jury are discharged from the case and ordered to return January 8, 1935.

Defendant McKnight is now called for sentence, and makes a statement in his own behalf; whereupon, Post Office Inspector C. E. Webster, makes a statement of the case; and

Defendant Isidore Bley Stein, who is present, is now called for sentence on his plea of Nolo Contendere heretofore entered, and said defendant makes a statement in his

own behalf, whereupon, it is ordered that the first count herein be dismissed as to defendant Stein, and the Court now pronounces sentence upon said defendant for the crimes of which he stands convicted, viz: violation of Section 212 of the Federal Penal Code, and

It is the judgment of the Court that defendant Isidore Bley Stein pay unto the United States of America fine in the sum of $200.00 on each of the 2nd, 3rd, 4th and 5th counts and stand committed to the Los Angeles County Jail until said fines are paid; and the Court now pronounces sentence upon defendant McKnight for the crimes of which he stands convicted, viz: violation of Sections 37 and 212 of the Federal Penal Code, and

It is the judgment of the Court that defendant James S. McKnight, on the first count, be confined for the term of sixty (60) days in the Los Angeles County Jail, and in addition that he pay unto the United States of America a fine in the sum of $500.00, and stand committed to said County Jail until fine is paid; and upon each of the 2nd, 3rd and 4th counts, defendant is sentenced to a term of six (6) months in said County Jail, said terms of imprisonment imposed on the 2nd, 3rd and 4th counts to begin and run concurrently and not consecutively, and to be suspended for a period of two (2) years on condition that defendant refrain from the violation of any laws of the United States, and he is to report to the Probation Officer of this District for such further instructions as may be required.

Bond on appeal as to defendant McKnight is fixed at $5000.00.

A stay of execution of one day is granted to defendants McKnight and Stein.

(Testimony of Mrs. W. A. Cummings)

[Title of Court and Cause.]

BILL OF EXCEPTIONS

Be it remembered, that heretofore, to-wit, on the 14th day of December, A. D. 1933, before the Honorable Paul J. McCormick and a jury, the above entitled cause came on for trial, and that upon said trial of said cause, Messrs. Hugh L. Dickson and Charles H. Carr appearing as counsel for the plaintiff, and Messrs. Mark F. Jones and Frank C. Shoemaker appearing as counsel for the defendant James S. McKnight, the following proceedings were had:

MRS. W. A. CUMMINGS,

a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

That during the month of May, 1933, she merely addressed some cards, some long sheets; that she was looking for work; that she was going by campaign headquarters and stopped in; that the headquarters were some place on Wilshire, but did not know whose headquarters they were; that she did not remember to whom she talked; that she just asked whoever was in charge if there was any work to be had and that she got work addressing some cards; that by cards she meant postcards. That she was given a mailing list to copy the addresses off; that she took some cards and the mailing list home and did the addressing there. After she addressed the cards a person whom she did not know called and she delivered the same to him; that she did not remember how many cards she addressed. The witness identified a card, plaintiff's Exhibit No. 1, and stated that the name on the front of said card was

in her handwriting. The reception of said exhibit in evidence was objected to on the grounds that the same was irrelevant and no foundation had been laid. The objection was overruled and defendant noted an exception. Said Exhibit No. 1 is in words and figures as follows:

(Card) Cancelled one cent stamp

Los Angeles, Calif.
May 22 2 P. M. 1933
Arcade Stat. 1

THIS SIDE OF CARD IS FOR ADDRESS

Mrs. A. M. Meinell
1628 Federal Av
West L. A.
Calif. 1155

(reverse side of card)

DEFEAT CUNNINGHAM FOR COUNCIL

We protest — Many people have been misinformed—and believe that Stephen W. Cunningham, candidate for council from the third district, is the "Graduate Manager" of the University of California at Los Angeles.

In view of the fact that he is, in truth, NOT a graduate of our University and since his gross mis-management of finances there has led to his dismissal, we believe that this erroneous impression should be corrected.

ALUMNI PROTEST LEAGUE, UNIVERSITY OF CALIFORNIA at Los Angeles, 215 West 7th Street.

(Testimony of Mrs. Sallie J. Thompson)

The witness further testified that she received compensation for addressing the cards, but did not remember from whom; that she didn't remember being paid by check and guessed that she was paid by cash. The witness then identified Plaintiff's Exhibit No. 2 as a check which she had received for addressing the cards; that she tried to cash the check, but there were insufficient funds in the bank "so I received cash afterwards"; that she did not remember from whom she received the check. Upon objection that same was irrelevant and no foundation had been laid for the reception of said check in evidence, said check was marked Plaintiff's Exhibit No. 2 for identification.

The witness further testified that her son also addressed some of these cards at her home.

CROSS-EXAMINATION

The witness did not remember whether any of the printed matter appearing on the reverse side of Plaintiff's Exhibit No. 1 was on there at the time she first had the card or first saw it; that to the best of her knowledge she had never seen the defendant R. E. Taylor prior to the trial.

MRS. SALLIE J. THOMPSON,

called as a witness on behalf of the plaintiff, identified Plaintiff's Exhibit No. 3 as a postcard that she had received through the United States mails. To the reception of said exhibit in evidence, the defendant objected upon the ground that the same was irrelevant and no foundation had been laid.

(Testimony of Mrs. Jessie Parker)

"THE COURT: It ought to be connected up a little more definitely. It may be received with the understanding that it will be connected up as far as the defendants are concerned, and unless it is, it will go out of the record."

To which ruling of the court the defendant noted an exception.

Said Exhibit No. 3 is identical in form and text with Exhibit No. 1 hereinabove appearing, with the exception of the name of the addressee, which in the instance of Exhibit No. 3 reads:

"Mrs. S. J. Thompson, 423 N. Spaulding Ave City".

MRS. JESSIE PARKER,

called as a witness on behalf of the plaintiff, having been first duly sworn, identified plaintiff's Exhibit No. 4 as a card which she received through the United States mails on or about the date appearing thereon, to-wit, May 23rd, 1933. To the reception of said exhibit, the defendant objected upon the grounds that the same was irrelevant and that no foundation had been laid for its introduction in evidence. The objection was overruled and an exception noted.

Said plaintiff's Exhibit No. 4 is identical in substance and text with plaintiff's Exhibit No. 1 appearing hereinabove, except for the name of the addressee, which in the instance of Exhibit No. 4 is,

"Mrs. J. L. Parker, 1319 Holmby Ave City".

WEST EICHEN,

a witness called on behalf of the plaintiff, having been duly sworn, identified plaintiff's Exhibit No. 5 as a card he received through the United States mails in May of 1933. To the reception of said exhibit in evidence, the defendant objected upon the ground that the same was irrelevant and that no foundation had been laid for its reception in evidence. The objection was overruled and the defendant took an exception to said ruling of the court.

Said Exhibit No. 5 is the same in substance and in text as plaintiff's Exhibit No. 1, with the exception of the name of the addressee, which in the instance of Exhibit No. 5 is,

"West Eichen, 840 S. Bedford St. City".

ANGELINA HART,

a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows: That in May, 1933, she procured work addressing plain postal cards; that she obtained this employment on Wilshire Boulevard around the 6300 block; that previous to obtaining this employment she had been at this address several times; that she didn't recognize anyone in the courtroom that she had seen on the first day she was there, with the exception of a Mr. Robeson sitting in the audience; that she did not know Mr. Robeson's name the first time she went in there; that she does not know a man by the name of Ringer, but she has seen him; that she saw him at the office on Wilshire Boulevard; that the office was away out on Wilshire; that she didn't believe there was any name

(Testimony of Angelina Hart)
on the office; that she first met Mr. Ringer when he came over to her house about May, 1933. The witness identified plaintiff's Exhibit No. 6 as a piece of paper that she had seen at the post office at Third and Central about the month of May, 1933; that she first saw it when she went to the post office at that address; that she thought she got a permit on it; that she must have had something to do with "that piece of paper" because she signed it; that the signature of "A. Hart" on the bottom of it was her signature; that she got the paper to sign at the post office from some clerk; that she didn't remember signing it; that this piece of paper (plaintiff's Exhibit No. 6 for identification) she thought was just like this, but didn't remember for sure; "I really don't remember; I remember going over there for that permit and I had to sign something and this is my signature"; that at the time she received the permit she gave it to Mr. Ringer, who was outside of the post office; "I just handed it to him and I don't know what he did with it"; that she did not see it afterwards until it was produced in court, except once before the grand jury; that as far as she knows it is in the same condition as it was when she delivered it to Mr. Ringer; that when she went into the post office Mr. Ringer gave her $10 for the permit; that she went into the post office and got the permit; that she had to sign to get the permit.

Plaintiff's Exhibit No. 6 for identification was received in evidence over the objection of the defendant that same was irrelevant and no proper foundation had been laid for its introduction. An exception was noted to the ruling of the court.

(Testimony of Angelina Hart)

Plaintiff's Exhibit No. 6 is in words and figures following:

"APPLICATION TO MAIL THIRD-CLASS MATTER IN BULK UNDER SECTION 435½ P. L. AND R.

Post Office, Los Angeles, Calif.

FEE PAID May 17, 1933, 193...

POSTMASTER:

Application is hereby made for a permit to mail third-class matter in bulk under the conditions prescribed by section 435½ 562, Postal Laws and Regulations, in quantities of not less than 20 pounds or 200 pieces.

I desire to mail the matter in the manner checked below:

(1) Without stamps affixed under permit, the postage being paid in money and the permit indicia being PRINTED on the matter - - - - - - - - X

(2) With PRECANCELED 1-cent stamps affixed - - - - -

(3) In Government precanceled 1-cent

stamped envelopes -
Mail at station.

Alumni Protest League
(Signature of applicant)
215 West 7th Street,
A Hart. (Address)

10296
West Los Angeles RO 3744
Form 3612B"

(Testimony of Angelina Hart)

The witness further testified that she did not know where Mr. Ringer was working at that time.

The witness further testified that she had seen plaintiff's Exhibit No. 3 in the office of the Post Office Inspector and also before the grand jury; that she did not see it anywhere else; that she addressed many of them, but did not know this particular one; that the handwriting on it looked like her sister's handwriting, Genevieve Aspley.

The witness identified plaintiff's Exhibit No. 7 as a check she received from the defendant R. E. Taylor "for addressing postal cards"; that she first saw the check at the office on Wilshire Boulevard; that the postcards were delivered to her house but she did not know by whom they were delivered.

"MR. CARR: I wish to offer this in evidence as Government's Exhibit No. 7.

MR. JONES: Objected to as incompetent, irrelevant and not binding upon the defendant McKnight. No foundation laid to bind him.

THE COURT: Sustained, unless it is connected up. Gentlemen, it is not to be considered as yet as to the defendant McKnight."

Whereupon the check referred to was received in evidence, marked plaintiff's Exhibit No. 7, which exhibit is in words and figures following:

(Testimony of Angelina Hart)

(Check)

"In full to date No. 125

Los Angeles, Cal., 5/20 1933

PAY TO THE ORDER OF Angie Hart - - - - $11.62
Eleven & 62/100. - - - - - - - - - - - - - - DOLLARS

Wilshire-LaBrea Branch
To SEABOARD NATIONAL BANK 16-303
5501 Wilshire Blvd. Los Angeles L. Simmons"

(Endorsed on back)
"Angie Hart
1445 W 24th St.
Los Angeles, Cal."

(perforation)
PAID 5 23 33.

(rubber stamp)
Pay to the order of any bank or Banker or through Los Angeles Clearing House.

16-77 UNION Bank & Trust Co. of Los Angeles MAY 22, 1933.

9.

"Q. I show you again Government's Exhibit No. 3 and ask you to look at the printing on the back of the card. Have you ever seen that printing on any cards before?

A You mean when I addressed them?

Q Yes.

A No. I didn't see that printing on any post cards at any time. The cards I addressed were blank. The first time I ever saw any printing of that kind was before the grand jury."

The witness further testified that she did not remember having seen a piece of cardboard identified as plaintiff's Exhibit No. 8 for identification, but had seen cards like it; that she had seen cards with the subject matter that is shown on plaintiff's Exhibit No. 8, for identification.

The witness further testified that she had collected other money for her services in addition to the check, plaintiff's Exhibit No. 7, for identification, but she didn't remember the exact amount; that she asked about everybody in the office before she got it; that the only defendant she saw in the office at that time was R. E. Taylor.

The witness further testified that she knew Mr. Stein; that she first met him about eight years ago; that she saw him in May, 1933, at the office at Wilshire Boulevard; the same office at which she saw Mr. Taylor; that she had a talk with Mr. Stein; that when she first went to the office she saw Mr. Robeson and told him that she wanted to see Mr. Stein; that she had heard that Mr. Stein was there; "the only one I remember who was present when I talked to Mr. Stein was Mr. Robeson".

(Testimony of Angelina Hart)

CROSS-EXAMINATION

That the only conversation she had with the defendant R. E. Taylor was to ask him to get paid for addressing the cards; that she had no discussion with him as to what she was to put on the cards; that when she received the cards they were perfectly blank; that she saw the person who delivered the cards "but it wasn't Mr. Taylor", and that she did not remember "who it was at all"; that someone picked up the cards at her house; that she was present some of the times that somebody came over "to pick up the cards"; that she does not know who sent the person for the cards; that all she knows is that somebody came over after the cards; she does not know the name of the person who came and got the cards.

"Q Who was it who employed you?

A Well, I don't know who did, because I went out there and asked to see Mr. Stein. They said he was busy and I waited for a few hours, and someone brought some cards in and a mailing list and they said, 'Address those,' while I was waiting to see him.

Q Was there anything on the cards.

A No.

Q And the cards you addressed for which you received payment were also blank cards?

A Some of them.

Q Some were blank and what was the others?

A The one I just had a few minutes ago, but I didn't get those at first.

Q The large card?

A Yes."

R. L. CASEY,

a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

That he was identified with the Seaboard National Bank at Wilshire and Dunsmuir in Los Angeles in May, 1933, and knew the defendant R. E. Taylor, who had a real estate escrow at that bank; that Mr. Taylor did not open an account with his bank during that year, either in his own or any other name; that he did not know R. E. Taylor by any other name; that a lady opened an account in his bank under the name of L. Simmons; that he did not personally meet Mrs. Simmons, but that an account was opened at the bank in the name of L. Simmons; that the records of his bank reflect that this account was opened on May 12th, 1933, and continued until June 30th, 1933; that he never saw the party who opened the account. The government thereupon had the ledger sheet of said bank marked as its Exhibit No. 9 for identification and had marked as its Exhibit No. 10 for identification a package of papers containing the signature card and several deposit slips.

ADELE MAUD MEINELL,

a witness called on behalf of the plaintiff, having been duly sworn, testified as follows: That she had previously seen Government's Exhibit No. 1 at her office on or about the 23rd day of May, 1933; that it was delivered to her office by a mail carrier.

CROSS-EXAMINATION

That she is in the real estate and insurance business and was active in the campaign; that she supported the

candidacy of Mr. Cunningham and was one of his lieutenants or workers in the campaign; that two days after receipt of plaintiff's Exhibit No. 1 she gave the card to Mr. Cunningham; that she was a paid worker of Mr. Cunningham's campaign and was paid by the campaign committee; that she received in the neighborhood of $500.00 for approximately three months work.

ISADOR BLEY STEIN,

a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

That he knows the defendants McKnight and Taylor; that he has known them since May, 1933; that he met Mr. McKnight in his campaign office at Wilshire and La Brea; that the office was located in the Ritz Theater Building; that he met Mr. Taylor at 6300 Wilshire Boulevard, which was "a campaign headquarters" for Mr. McKnight; "I worked in the campaign with them; I don't believe I was hired; it was a mutual agreement between Mr. McKnight and myself"; that he went to work at the headquarters about May 6th, 1933; that he saw Mr. Taylor almost daily in the campaign headquarters; that he had charge of about fifteen people that solicited precincts; that he was in the campaign headquarters ten days all the time, then off and on for three or four days; that the ten days he speaks of were put in at the headquarters to about the 15th or 16th of May, and the three or four days he speaks of were put in after until the campaign was over; that he saw Mr. Taylor at the headquarters during that time; that Mr. Taylor did not have an office or a desk in the headquarters; that he never saw

anyone sign the checks; that the employes that he saw paid were paid in cash by Mr. Robeson; that to a certain extent he had something to do with the preparation of campaign propaganda and pamphlets; that what he did in this regard was to furnish "the information to Mr. McKnight and what he proposed to put out in the newspapers": that he told Mr. McKnight different things that he knew about the opposing candidate and "that was the facts that he intended to use in his statement".

"Q Did you ever prepare anything at any time for the purpose of presenting to the public as campaign streamers or "postcards or pamphlets or anything of that nature?

A I didn't directly prepare anything myself. I worked with Mr. McKnight on several pieces of campaign literature or on the wording or data on literature that would have gone out."

The witness further testified that he prepared in rough draft a letter to be sent by the defeated candidates who were in favor of Mr. McKnight; that he took this letter to Mr. McKnight's house to have those men sign it; that he worked with the artist on the preparation of drawings; that he worked on the wording of the matter that would be distributed to the voters.

"I helped the artist, I talked with him when he drew this borderline", referring to the back of the card, plaintiff's Exhibit No. 3.

"Q I mean by the composition of it, the wording of it, the subject matter.

A I made that portion of it. (indicating)

Q Who made the other?

(Testimony of Isador Bley Stein)

A It was made up between Mr. McKnight, Mr. Lee Ringer and myself."

That this was done around the 10th of May; that he was familiar with the routine of the office.

"Q What was the routine as to presenting this subject matter to the public?

A I cannot say. Mr. Ringer is a friend of mine that I sent to Mr. McKnight to see if he could work up the printing, there was a lot of printing to go out, and help in the advertising business."

That he was around the headquarters; that he saw him with different pieces of mailing matter to be printed; that he had gone out and gotten bids on it and he had returned with those bids in the regular way and had received his commission on it; that he does not know who L. Simmons is; that he never sent out any cards; that he never knew of any being sent out from campaign headquarters.

"Q Did you ever at any time discuss it with anyone as to any cards being sent out?

A Not definitely as to certain cards. I had a conversation with reference to the possibility of postcards going out with Lee Ringer and Mr. McKnight about the 10th of May. We had prepared to send out a newspaper and Mr. McKnight had suggested that we get started on the campaign and we expected to have to add something to the newspaper in the way of handbills and letters or something of that nature. I think he had determined before that what they should be, and a rough draft had been made, and at that time he made a suggestion that perhaps we might be able to use postal cards because they were cheaper. * * * That was the only conversation I had

with them directly about postal cards. That conversation I think was the only one I had relative to postal cards.

Q Has anyone talked to you about this case in the last couple of days?

A No, sir.

Q You haven't been talked to by anybody?

A No, sir.

Q Has Mr. Taylor talked to you?

A No, sir.

Q He hasn't talked to you about the court room here?

MR. JONES: I object to that as cross examination of his own witness.

MR. CARR: At this time I am going to ask to be allowed to cross-examine this witness on the ground of surprise.

MR. JONES: We object to that at this time for the reason that the witness has shown no hostility whatsoever and has freely, frankly and voluntarily answered the questions, all questions that have been propounded to him. He is a defendant in the law suit and is voluntarily testifying in this case and for that reason I object to the witness being cross examined, a total absence of any reason why he should be permitted to cross examine him.

Q BY THE COURT: Are you a defendant in any civil suit pending between these other defendants? A. No, sir.

Q You entered a plea of what we call nolo contendere here in this case? A. Yes, sir.

Q And on the date that that plea was entered the United States Attorney, Mr. Carr, was here, was he not? A. Yes, sir.

(Testimony of Isador Bley Stein)

Q And he suggested to the court that the government was willing that the court should receive that plea of nolo contendere, didn't he? A. Yes, sir.

THE COURT: You may cross examine him, Mr. Carr.

MR. JONES: Exception.

Q I hand you here Government's Exhibit No. 3, certain language there with the letters or the words appearing thereon, 'Alumni Protest League'. What is that League?

A The League is nothing.

Q What do you know about that, Mr. Stein?

A All I know is that is the name of a league, used as a name to put out information against the candidacy of Cunningham.

Q Do you know where that name came from?

A Yes, sir, I think this name came from Mr. McKnight's suggestion.

Q Just give us the date when that suggestion was made?

A About May 8th or 9th; I think Lee Ringer was present.

"MR. JONES: I object to that upon the ground that it does not tend to prove or disprove the conspiracy charged in this indictment. * * * The indictment * * * refers to * * * the mailing of a particular postal card and not to the formation or any of its contents. * * * That is not charged in the indictment * * * and * * * any testimony of that kind would be incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. JONES: Exception.

(Testimony of Isador Bley Stein)

Q Relate the conversation.

A I had previously arranged with Mr. McKnight on the preparation of a newspaper and Mr. McKnight suggested that we mail something or send out handbills earlier in the campaign, that the newspaper would take considerable time to prepare, and he asked me if I would, if I would see to the sending out of letters telling about the campaign. He knew that I had gone to the university and that I had known Mr. Cunningham at the time he was manager there and the facts that I told him about as to his mismanagement of the affairs and that those facts should be known to all of the voters, and at the time he asked me I told him that my name wouldn't mean anything signed to a letter, just a waste of postage, and at that time he suggested that since Lee Ringer and myself and the girl who was there that I had sent for a job were all graduates of the university perhaps we should form an association and use a name which would become or would be effective in that particular group, and I told him that I would not, that so far as the Alumni Association was concerned they were all for Cunningham and there was no percentage in trying to make up a league of alumni, and at that time he suggested it would only be a protest league, that no one would know he was in it, that he was not publishing any of the members, and we might as well call it an alumni association.

Q Anything further said as to taking an office location for that organization?

A Yes, sir. He said that there would have to be some form of dignity to it if it was going to be an organization. He asked me what was my address downtown because he said we could use the address down there, and

(Testimony of Isador Bley Stein)

naturally the building there was at 215 West Seventh Street, the Bartlett Building, and he said, 'So far as the League is concerned can't we use that?' and I told him it was the number of the building, and so far as I was concerned that they were welcome to it, that they had 400 rooms there, and that it didn't make any difference to me what it was used for.

Q Was the name used in the campaign?

A That name was used.

Q In what way was it used?

A It was used the way it was used there on this card, apparently was used.

Q Did you know what was the way it was going to be used?

A The only way I knew it was used it was used for sending some of these cards, they used that same name for them.

Q Did you have any conversation with Mr. McKnight at any time later with reference to any postal cards or any post cards that had been mailed or might have been mailed?

A Yes, I had a couple of conversations after this, that is, after we heard the postal cards went out.

Q Who was present at that time?

A That I can't recall because I don't remember exactly the conversation.

Q Were you present? A. Yes, sir.

Q Who else? A. I don't recall.

Q Was Mr. McKnight present? A. Yes sir.

Q Was Mr. Taylor present? A. I don't think so. I don't believe he was there.

Q About what was the date of that conversation?

(Testimony of Isador Bley Stein)

A It was around the time these cards were—I received one of these cards approximately around May 20th.

Q All right, now; relate the conversation.

A I went down to the building where I was located and I had received 50 different calls from different people wanting to know why I was opposed to the university and why I was dragging the university into a political squabble, and Cunningham called up, and two or three people called up telling me what they were going to do and what I had done, and so forth, and I spoke to Mr. McKnight, telling him that apparently something was wrong somewhere because people all thought that I was financing a campaign against the university, that we had had a lot of people in the office there, one man posing as a postal inspector, and I understand people had made threats of what they were going to do with the Grand Jury, and so on, and I told them that so far as I was concerned I was getting out of the campaign, I was through, and I told him that it was a fine mess so far as I was concerned.

Q Was there any further conversation?

A I don't think so.

Q Did Mr. McKnight have anything to say?

A No, sir; only that he was sorry he had caused me any inconvenience. He said he didn't think any wrong had been done, and so far as he was concerned he didn't feel I had done anything myself in any way to get me in bad with the university.

Q Was Mr. Taylor at the office at that time, at any place in the office?

A Well, to be very truthful I don't remember Mr. Taylor around at that time.

(Testimony of Isador Bley Stein)

Q Well, now, Mr. Stein, will you look again at Government's Exhibit No. 3, at the subject matter, and state just what portion of that subject matter that you yourself prepared?

A Well, together with Mr. McKnight and Lee Ringer, the three of us prepared all of the matter that is on there except perhaps some of the phraseology.

Q Read the part that you prepared, Mr. Stein.

A It says, 'Many people have been misinformed and believe that Stephen W. Cunningham, candidate for Council, from the Third District, is the Graduate Manager of the University of California at Los Angeles. In view of the fact that he is in truth not a graduate of our university we believe that the erroneous impression should be corrected." I prepared that information.

Q What part of it did Mr. McKnight prepare?

A Part of the discussion that occurred was relative to the idea that the reading matter was not strong enough and the other phase should be inserted.

(Question read)

A May I explain, at the time we had prepared the other part, I gave a copy to Lee Ringer and Mr. McKnight —he asked about the bids on the printing and Mr. McKnight suggested to check through the matter again, he said that he didn't think it was strong enough, that it didn't say anything, and at that time suggested we should say something about his management or mismanagement, and at the time that we had the conversation he said that we had better put in something about his not being a good manager of the funds, and he inserted this, 'Since his gross mismanagement of finances there has led to his dismissal'.

(Testimony of Isador Bley Stein)

Q Mr. McKnight prepared that there himself?

A Yes, sir, I think so, that part."

The witness testified that he knew Miss Hart and saw her at the campaign office in 1933; that he didn't see her do any work there; that all he knew about her activities was that he had sent her there to get work.

That he knows a man by the name of Nolan, who is an artist; that he met him at the headquarters in 1933 in connection "with the border line that was originally intended for a newspaper cut"; that Nolan drew the border on plaintiff's Exhibit No. 4.

"Q I show you here, Mr. Stein, Government's Exhibit No. 8 for identification, and I call your attention there to the subject matter and the printing on the back. Have you ever seen that subject matter at any time?

A I have seen the drawings, that is the outline there, the words.

Q Have you ever seen the subject matter of composition of the words there?

A Yes, sir, I have seen that; I have seen a copy of these cards.

Q Where did you see them?

A I can't recall exactly where I saw them. I know I have seen certain of these cards. I think it was right around the time of election that somebody handed me one of these cards".

That the artist did the work on the drawings on Exhibit No. 8 for identification; that "that was prepared at the same time that the artist came out and prepared the work on the other one".

"Q Well, I will ask you, Mr. Stein, relative to Government's Exhibit No. 8 for identification, if you had any

(Testimony of Isador Bley Stein)
discussion at any time as to the subject matter of that card?

A The only discussion I had was at the time the artist returned the two drawings and there was some correction made on entire cut." That the artist returned the two cuts at the same time; that he never had anything to do with any permit of any kind while he was at headquarters, but "had a conversation relative to it" about May 15th or 14th "at the headquarters"; that there was present Lee Ringer, Mr. McKnight and the witness. The witness further testified, "I was in another part of the office there and Mr. Ringer came in and said they needed a permit, that the cost was $10; I told him I did not know anything about that and he would have to see Mr. McKnight;" that he went to Mr. McKnight and Mr. McKnight said "all right"; that he told him he needed $10; that he said "We will have to have it"; that he told him to go to Mr. Taylor and get the $10; that he went to Mr. Taylor and asked him for $10 and he took it out of his pocket and gave me the $10. The witness further testified he gave the $10 to Mr. McKnight, who in turn gave it to Mr. Ringer.

"Q What did he do then, go outside or what?

A I went into the other office and Ringer came in to see me, and said he was in the advertising business and he was connected with the university and he didn't want to take out the permit in his name for political reasons so he wanted to know if I would take out the permit or have somebody take it out.

MR. JONES: I move to strike that as not in the presence of Mr. McKnight.

(Testimony of Isador Bley Stein)

THE COURT: The objection is overruled.

MR. JONES. Exception."

The witness further testified that he went out and had a talk with Mr. McKnight, who asked him if he would get the permit. The witness responded that he wasn't interested in any campaign permit; that Mr. McKnight inquired "Who can you send then? Have we got a girl here?" The witness said, "Well, so far as a girl is concerned any of them can go down there"; that McKnight said, "What is the name of the girl you sent over here to do some work?" "and I said, 'Hart', and he said, 'Is she all right; can she go?' and I said, 'I guess so', and Ringer asked me where she lived and I gave him the address and he went over and picked her up.

Q You have spoken of a permit. What was the permit supposed to be for, Mr. Stein?

A It was supposed to be for mailing out matter, and what it was to be classed in, it was a postal permit.

CROSS-EXAMINATION

The witness further testified that the composition on plaintiff's Exhibit No. 3, which he had identified as personally preparing, was written on a sheet of paper and was not on plaintiff's Exhibit 3 when he prepared it; that the remainder of the composition on plaintiff's Exhibit No. 3 was prepared in the presence of himself, Lee Ringer and Mr. McKnight; that Mr. McKnight asked him if he thought it was strong enough, to which he replied that he didn't know. Mr. McKnight said, "Well it doesn't seem to say much. We had better say something about his not being a good manager" and I told him that was all right. That in that conversation he told Mr. McKnight

(Testimony of Isador Bley Stein)

that Mr. Cunningham was not a good manager, that he had mismanaged the finances up there at the university and that he had been dismissed from that position; also the witness testified that the first time he met Mr. McKnight he told him he should use that information in the campaign. The witness further testified that he told Mr. McKnight that Cunningham had grossly mismanaged the finances there and that he could prove it; that the sheet of paper upon which was written the subject matter later appearing on plaintiff's Exhibit No. 3 was given to Lee Ringer.

"Q You didn't know when it was going to be used or what it was going to be used for at that time, did you?

A No, sir."

That there was no statement made either by Mr. McKnight or Mr. Ringer as to how the information contained in that piece of paper which had the same language on it as the body of the plaintiff's Exhibit No. 3 was to be disseminated to the public; that he had no knowledge who sent out plaintiff's Exhibits Nos. 2, 3, 4 and 5; that he never saw plaintiff's Exhibit No. 8 for identification, until after the indictment; that he had previously seen the art work appearing on plaintiff's Exhibit No. 8, but had not seen the body or the printed matter until after the prosecution was commenced; that the art work appearing on plaintiff's Exhibit No. 8 for identification was drawn "to be used in a newspaper; that those cartoons were to be used in a newspaper"; that he never heard any talk that they were to be used otherwise than in a newspaper; that this was also true of the text appearing in the body of plaintiff's Exhibit No. 8 for identification; that he had no knowledge that plaintiff's Exhibit No. 8

(Testimony of Isador Bley Stein)

was ever used as a postal card; that he never *new* Mr. McKnight until May of 1933; that he went to him of his own volition; that Mr. McKnight had not sent for him.

"Q You told him that you were interested in his campaign and that you would like to assist him?

A * * * I met him and introduced myself to him and told him—he asked, 'Would I care to help him' after I had explained the fact that Cunningham had been dismissed as manager of the university and I believed that if people knew that I didn't think he would get many votes, and he asked me, 'Would I care to help him?' and I told him, 'Yes'."

That when Mr. Ringer came to him regarding the $10 for a permit Ringer did not tell him of the kind of a permit he expected to get and that he didn't know what Ringer was going to mail under the permit. "Q And Mr. Stein, so far as you heard any conversation, you didn't know what was going to be mailed under that permit? A No, sir." The witness further testified that there were many people working at the campaign headquarters at that time, perhaps eighteen or twenty.

RE-DIRECT EXAMINATION

That around May 12th "Mr. McKnight told me to have Ringer get an estimate of the printing of the matter he had written to go inside of the drawing for the cut that had been made and get that reading matter printed. I asked him how many and he said about 25,000." The witness further testified the 25,000 was "of that paper". "Q. What kind of paper? A. He didn't say." The witness further testified that he received a postal card with the subject matter of the kind that was on plaintiff's Exhibit 4.

ELSIE PETERS,

a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

That she was a clerk in the Los Angeles post office in May, 1933; that she had previously seen plaintiff's Exhibit No. 6, an application; that she filled out said exhibit and that a person by the name of A. Hart signed it; that this was done at the Permit Department at Third and Central; that other papers were issued by the post office department in the regular course of business at the time the application was signed by the person for a permit; that there is a yellow sheet that is issued in triplicate that is the real permit. Plaintiff's Exhibit No. 11 for identification is a file from the Permit Department, "that is the third copy of the permit that is issued; there are three of them; the original goes to the permittee, to the person to whom the permit is issued and the second one goes to the Department at Washington, and the third one is kept in the Permit Department. This is the third copy of the permit that was issued"; that plaintiff's Exhibit No. 11 is made by the postal clerk simultaneously with the execution and delivery of the application, plaintiff's Exhibit No. 6, and the stamp of the local post office is impressed upon the paper at that time. The permit was received in evidence as Government's Exhibit No. 11 and is in words and figures following:

(Testimony of Elsie Peters)

"Form 3601—ED. 1929

PERMIT TO MAIL NONMETERED SECOND, THIRD AND FOURTH CLASS MATTER WITHOUT POSTAGE STAMPS AFFIXED, AS PROVIDED BY SECTIONS 562 and 589 POSTAL LAWS AND REGULATIONS

UNITED STATES POST OFFICE

Los Angeles, Calif.

Permit No. 10296 May 17, 1933.

Alumni Protest League,
215 West 7th Street,
Los Angeles, Calif.

Permission is hereby granted you to mail identical pieces of nonmetered third or fourth class matter, or second class matter chargeable with the transient rate or the rates applicable to copies mailed for local delivery by letter carrier at free-delivery offices, without postage stamps affixed, on prepayment in full of the lawful postage in money, under the provisions of Sections 435½ and 452, Postal Laws and Regulations, provided the conditions governing the acceptance of such matter, printed on this permit, are fully complied with.

Receipts will be issued for the mailings in accordance with the prescribed conditions and these receipts may be compared with the statement which will be furnished you on Form 3613 at the expiration of each month, if desired.

If no mailings are made under this permit for a period of twelve months, its surrender for cancellation will be requested. Mailings to be made at West Los Angeles Sta. 1544 Purdue St. ONLY.

e p

RO 3744

P. P. O'Brien, Postmaster."

(Testimony of George T. Woodbury)

The conditions upon which nonmetered mailings under this permit are allowed, are contained on the reverse side. Because of the impracticability to here reproduce the same in the record, said exhibit is being separately certified to.

GEORGE T. WOODBURY,

a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

That he was manager of the Bartlett Building, located at 215 West Seventh Street, and as such had control of the renting of the offices; that he had a list of the offices and who rented the different offices. "Q. Referring to May, 1933, did you have a tenant there carrying the name of Alumni Protest League? A. Not that I know of." That if they did, he would know *if* it; there might have been, but not on his records; that they rent the offices for other purposes besides the name under which they are rented; that he never saw the name of Alumni Protest League in any office in that building.

CROSS-EXAMINATION

That they have a great many tenants in the building; that 10% of the cases were tenants renting office space, that they don't know to whom the tenant may sub-rent or sub-lease space to; that he didn't know whether in May, 1933 any tenant in the building had desk space in an office by the name of Alumni Protest League, or whether any tenant in the Building had given anyone office space in the name of the Alumni Protest League.

EXAMINATION

BY THE COURT

That he knew Mr. Bley Stein; that he had space in that building last year; that he had seen R. E. Taylor, but in what place or in what connection he could not recall.

STEPHEN W. CUNNINGHAM,

a witness called on behalf of the plaintiff, and having been duly sworn, testified as follows:

That he was a member of the Los Angeles City Council and had been such a member since July 1st, 1933; that he was elected at the general election on June 6th, 1933; that he was a candidate in the primary May, 1933; that he knows Mr. McKnight and that Mr. McKnight was an opponent of his in both the primary and the final election.

LORAN R. FISHER,

a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

That he was employed by the Seaboard National Bank during the month of May, 1933, at Wilshire and LaBrea; that he knows the defendant R. E. Taylor; that he became acquainted with Mr. Taylor a short time prior to May, 1933, and that he saw Mr. Taylor during the month of May; that of plaintiff's Exhibit No. 10 for identification, he had seen the signature card, the identification card and the deposit ticket dated May 12th, 1933; that he saw Mr. Taylor at the bank on May 12th, 1933 in company with a lady whom he introduced to the witness

as Mrs. Simmons; that he gave her name as Mrs. L. Simmons and said she was his secretary; that they expressed their desire to open a bank account "which was done at that time"; that he did not know the person L. Simmons prior to that date and he does not know who L. Simmons is.

To the reception of plaintiff's Exhibit No. 10 in evidence the defendant objected upon the grounds that the same was irrelevant, incompetent and immaterial and that no showing had been made that the defendant authorized the opening of the account or that it was opened in his presence or with his knowledge.

"THE COURT: Unless it is connected up with the defendant McKnight it will not be considered as to him,—the objection of the defendant Taylor is overruled".

Said document was received in evidence and marked plaintiff's Exhibit No. 10 for identification. Said exhibit is separately certified to the Circuit Court of Appeals because of the impracticability of reproducing it in the record.

The witness further testified that plaintiff's Exhibit No. 9 for identification was the ledger sheet of the account in the bank and reflected the bank account of said L. Simmons. The same objection to the reception of this exhibit in evidence was made by the defendant and the court placed the same limitation upon its reception that he had to Exhibit No. 10. Said Exhibit No. 9 is separately certified to the Circuit Court of Appeals because of the impracticability of reproducing the same in the record.

(Testimony of Herbert J. Nolan)

The witness further testified that he did not know whether L. Simmons ever came back in the bank after that time; that he didn't remember whether R. E. Taylor ever came back in the bank after that time.

HERBERT J. NOLAN,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

That he was a commercial artist and drew sketches for commercial purposes and was engaged in business during the month of May, 1933; that he knows the defendants R. E. Taylor and James S. McKnight; that he knows a man by the name of Al Ringer; that he saw him in 1933; that he had a conversation with Mr. McKnight at his headquarters in 1933; that he went there at the request of and with Mr. Ringer in May; that Mr. McKnight merely came out in the hall and was introduced to him; that he did not see Mr. Taylor at that time; that he had a conversation with Mr. Ringer upon the occasion of this visit to Mr. McKnight's headquarters; that it was in regard to some art work for political purposes; that he believes that Mr. Stein was the man who gave him an order for a drawing for political purposes; that plaintiff's Exhibit No. 8 for identification was his drawing, that is, "the illustration and the legend on the margin"; that Mr. Stein gave him the directions to make that type of drawing; that he did not converse with reference to the drawing appearing on Exhibit No. 8 for identification with any other person than Ringer and Stein, and didn't think Mr. Ringer had much to say about it; that he did not meet Mr. McKnight when he was at the headquarters in

(Testimony of Herbert J. Nolan)

connection with "these drawings"; that he doesn't remember any discussion with him.

"Q Now, what was the ultimate result of your drawing? Was it accepted or rejected?

A It was accepted.

MR. JONES: I object to that as calling for a conclusion of the witness. I would like to have the conversation.

THE COURT: The objection is overruled.

MR. JONES: Exception."

The witness further testified that he was paid for the drawing and that he thought Mr. Taylor handed him the check; that he had a record with him of the work and type of work that he did; that it was "just drawing and lettering, drawing from one of their stickers". The witness identified two checks under date of 5/16/33 and 5/23/33 as check which he received as compensation for has services; that he does not know the person (L. Simmons) whose name appears thereon; that he cashed both of the checks at the bank upon which they were drawn. The defendant McKnight objected to the reception of the same in evidence upon the ground that no foundation had been laid to show that he had authorized the giving of the checks or had anything to do with them. The court overruled the objection, to which the defendant McKnight noted an exception.

(Testimony of Herbert J. Nolan)

Plaintiff's Exhibit No. 12 is in words and figures following:

(Check) No. 140

Los Angeles, Cal. 5/23/1933

PAY TO THE ORDER OF H. J. NOLAN - - - $17.50
SEVENTEEN & 50 100, - - - - - - - - - - - DOLLARS
Wilshire LaBrea Branch
To SEABOARD NATIONAL BANK 16-303
5501 Wilshire Blvd. Los Angeles. (Signature torn off)
(Endorsed on back)
H. J. Nolan

- - -

(Check) No. 108

Los Angeles, Cal. 5/16 1933

3 W. L. B. May 16, 1933
16-303

PAY TO THE ORDER OF H. J. NOLAN, - - - $12.50
Twelve & 50/100 - - - - - - - - - - - - - - - DOLLARS
Wilshire LaBrea Branch

To SEABOARD NATIONAL BANK 16-303
5501 Wilshire Blvd., Los Angeles

L. Simmons.

(Perforation)
PAID 5 16 33
(Endorsed on back)
H. J. Nolan."

(Testimony of Harold H. Gartner)

The witness further testified that he had seen a part of the same drawing appearing on plaintiff's Exhibit No. 5 for identification. Referring to the card, plaintiff's Exhibit No. 5 for identification, the witness was asked if the card was printed "in that shape by you", and answered, "No, sir, I didn't do that. Q. You didn't do the address? A. No, sir, I just made the drawing. This has the same drawing as the other exhibit that was shown me. When I had perfected the drawings I brought them to Mr. Stein's office and submitted them for inspection"; that he thought he submitted them to Mr. Stein for inspection by Mr. Stein and Mr. Ringer. "Q. Can you tell the jury whether or not at the time you were in the office Mr. McKnight looked over either of these drawings? A. Yes, sir, he saw them"; that he had a pencil sketch in rough draft; that he did not recall that Mr. McKnight made any comment; that the drawings were finally submitted to Mr. Stein and Mr. Ringer; that Mr. Stein's office was in the headquarters of Mr. McKnight at 6300 Wilshire Boulevard.

HAROLD H. GARTNER,

a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

That he was the general manager of the Excel Printing and Lithograph Corporation located in the City of Los Angeles; that he knew the defendants R. E. Taylor and James S. McKnight; that he had business transactions with Mr. McKnight or Mr. Taylor in the year 1933; that it had to do with a check that came back "insufficient funds"; that he knows a man by the name of Ringer;

(Testimony of Harold H. Gartner)

that he had business contact with Ringer in the year of 1933 with reference to the McKnight campaign for City Council. "Q. Did you have any conversation with Mr. McKnight in the year 1933 with reference to printing? A. Once, with reference to a check". The witness further testified that the check was for printing cards, "a business card, a mailing card". "Q. I show you here, Mr. Gartner, a piece of paper and ask you if this is like, similar to, or is the same type of printing that you did? A. I think that is a sample, that is one of the job tickets"; that it was this printing that he had the conversation with Mr. McKnight concerning the money; that Mr. Taylor gave him the purchase order for the printing; that he was directed to print 30,000 and after they were printed he delivered them, in part, to an address in Hollywood and the remainder on 24th Street in Los Angeles; that he didn't know the people's name to whom they were delivered; that he didn't remember the address, that "it was about half a block West of Vermont on 23rd or 24th Street; Q. I show you here a piece of paper and ask you to look at it and state whether or not you have seen that before? A. Yes, sir, that was an order for the cards"; that he did not know who the person was who put the initials appearing upon the order; that Mr. Taylor handed the order to him; that it was handed to him at the office on Wilshire Boulevard out at Carthay Circle; that Mr. Taylor did not give him the check for the amount of the order; That "the check was in an envelope"; "Q. I show you what purports to be a check and ask you if you have ever seen that before? A. Yes, sir"; that he received it in an envelope at the office; that either Mr. Robertson or Mr. Taylor gave it to him and that he put it in the

bank; that it was then that he had a conversation with Mr. Taylor concerning the payment of that $61.50 check; that Mr. Stein and Mr. Robertson were present; "Q. With whom did you converse? A. Mr. Stein was there when I went out there and he telephoned, and pretty quick the money came out by messenger for the check"; that he thought it was Mr. Taylor who phoned to Mr. McKnight; that Mr. McKnight did not come out; that Mr. Taylor said he would call Mr. McKnight up and that he remained there a while and then a messenger came with $61.50. "Q. I show you this paper that I have shown you before, that is the first thing you did for Stein which was delivered at the time Taylor and McKnight paid you the $61.50. MR. JONES: That is objected to as calling for a conclusion of the witness, leading and suggestive. THE COURT: The objection is overruled. MR. JONES: Exception. A. Yes, sir. MR. DICKSON: I offer this piece of paper in evidence as government's Exhibit next in order as part of the conspiracy charge." To the reception of the piece of paper in evidence the defendant objected upon the grounds that no foundation had been laid, "not made in his presence, not shown to have been authorized by him in any manner, incompetent, irrelevant and immaterial. THE COURT: The objection is overruled. MR. JONES Exception."

Plaintiff's Exhibit No. 13 is a cardboard folder upon which appears four times the following text:

(Testimony of Harold H. Gartner)

"DEFEAT CUNNINGHAM FOR COUNCIL

We Protest His only qualification as candidate appears to be his association with the University of California at Los Angeles. Inasmuch as that association has not been a happy one, we are appealing to you to defeat this man who depleted our student body finances—and now seeks public office!

HERE ARE THE FACTS:

Cunningham was dismissed as manager of student affairs when the student body found itself without funds—and facing a deficit of $126,000.00.

We object to his attempt and that of his political backers to capitalize upon the dignity and good name of U. C. L. A. It took 9 years to do it.

Go*l*d help the taxpayers if he's elected councilman.

ALUMNI PROTEST LEAGUE
University of California at Los Angeles"

EXAMINATION BY THE COURT

"BY THE COURT: Referring to that house on E. 23rd Street, what was that on East 23rd St.?

A. That was an apartment house."

The witness further testified that there was a man and a woman there and that he thought that some young lady invited him in the house. "Q. Would you remember the

name of the person that was there if you heard it? A. All I remember was that somebody said to take so many out there and so many to Hollywood and I checked them on my order and made the delivery. It was a two-story stucco apartment with about three apartments in it and the other building was a double bungalow."

Thereupon the plaintiff offered in evidence its Exhibit No. 8 for identification. The defendant objected to the reception of said exhibit in evidence upon the grounds that no foundation had been laid and that it was irrelevant and immaterial, and upon the further ground "that it is hearsay so far as he is concerned, not binding upon him, not having been shown that he authorized it". The objection was overruled, to which the defendant noted an exception. Because plaintiff's Exhibit No. 8 is identical in substance and text as plaintiff's Exhibit No. 13 appearing hereinabove, the same is not reproduced here.

"MR. DICKSON: We also offer in evidence the piece of paper that this witness testified was an order for the printing.

MR. JONES: The defendant McKnight objects to that upon the ground that it was never authorized by him and incompetent, irrelevant and immaterial." The objection was overruled and an exception noted. Said piece of paper was received in evidence and marked plaintiff's Exhibit No. 14, and is in words and figures following:

(Testimony of Harold H. Gartner)

"PURCHASE REQUISITION

Los Angeles, Calif.

No................. May 19, 1933

To Excel Printing Co. 417 Wall Street

Please furnish the following:

Stock and printing of 30 M second post cards 4½"x 6½"

Definite price $61.50

Ordered by ....

Approved: R. E. T."

"MR. DICKSON: We offer in evidence check dated May 27, 1933 payable to Excel Printing Company in the sum of $61.50 drawn on the Seaboard National Bank, Wilshire and LaBrea Branch, endorsed by this witness, and referred to by him in his testimony.

MR. SMUCKLER: The defendant Taylor objects to it on the ground it is incompetent, irrelevant and immaterial, not within the issues in this case and no foundation laid, does not tend to prove or disprove any of the charges in the indictment.

MR. JONES: The defendant McKnight joins in the objection."

Upon examination by the court the witness testified that he did not know whether the signature was torn off when he last saw the check; that he didn't remember what condition it was in; that the check was deposited in the bank, but when it was deposited that it was in the same mutilated condition *that is* in now.

THE COURT: Objection overruled.

MR. JONES: Exception.

Thereupon said check was received in evidence and marked plaintiff's Exhibit No. 15, and is in words and figures following:

"No. 128

Los Angeles, Cal. 5/22/1933

PAY TO THE ORDER OF Excel Ptg Co. - - - - $61.50

Sixty one & 50/100, - - - - - - - - - - - - DOLLARS

Wilshire LaBrea Branch

To SEABOARD NATIONAL BANK 16-303

5501 Wilshire Blvd., Los Angeles

(Signature torn off)

(Endorsed on back)
Excel Printing Co.
Harold H.Garten
Arts Printing Co.
Harold H.Garten
(several rubber stamps one over the other)"

Further examination by the court:

"When you received the check was it in the same mutilated condition as it is in now?

A. No, sir. It had the signature on it."

The witness further testified that he took the check to the office and he thought he gave it to Mr. Taylor; that at that time it still had the signature on it.

(Testimony of Harold H. Gartner)

CROSS-EXAMINATION

The witness further testified to his visit to the campaign headquarters regarding the payment of the check which had been returned "insufficient funds"; that he saw Mr. Taylor and Mr. Stein. "Q. And at that time Mr. Taylor told you he would phone Mr. McKnight? A. No, sir. He told me he was going to phone and he went in the outer office and then he came back and said a messenger was on the way out with the money". He further testified that several hours later a messenger came out with the money; that he was in the office when the messenger came and when he got the money he returned the check to Mr. Taylor at that time; that he never had a talk with Mr. McKnight except about the check; that he didn't telephone Mr. McKnight about it; that Mr. Taylor and Mr. McKnight were both standing in the doorway of the office when the messenger came in; that the messenger handed the money to Mr. Taylor, who in turn handed it to Mr. McKnight, who handed it to the witness; that he then handed the check back to Mr. Taylor; that Mr. McKnight arrived at the office before the messenger; that he never heard Mr. Taylor phone Mr. McKnight and he didn't know whether he did or not. Mr. Taylor said he was going to; that Mr. McKnight came into the office about fifteen or twenty minutes before the messenger; that the conversation he had with Taylor when he said he was going to the telephone occurred about 2 o'clock, and a couple of hours later he got his money; that Mr. Mc-

(Testimony of Harold H. Gartner)

Knight didn't say anything; that all he remembered that Mr. McKnight said was "How do you do"; he didn't remember anything that was said when the money was handed to him. The conversation concerning the check and the receipt of the money was either the latter part of May or the early part of June.

RE-DIRECT EXAMINATION

Do you believe that the printed matter which was to be put on "these cards" came over from "the Metropolitan Engraving Company"?

BY THE COURT: When you took this matter on the street, on 23rd Street, did you know what the matter contained, that was contained in the package?

A. I knew it was postcards.

The witness further testified he knew this because there was one on the outside of the package; that he could not tell now what was on the cards; that if he read every job that came down he would be busy reading jobs, "I didn't know what was on the card; there was some printed matter on it and some drawing"; that he first saw plaintiff's Exhibit No. 13 when he delivered the cards on 23rd Street. "Q. You are able to say that was a facsimil*i*? A. Yes, sir, I know the card. I don't know what was on it; I can't identify the card.—I could identify the drawing, but I don't know exactly. I know there was a university on one side of it saying Cunningham was kicked out of office or something to that effect; something

about a deficit of around a hundred thousand dollars." That the part of the work he did was the printing; that he first saw the printing when the engravers' plates came into the office; that he used the engraver's plates upon the press upon which the cards were printed; that he didn't do any of the printing, "naturally I know what mechanical work was to be done, all I did was to deliver the cards after the cards were completed. Naturally I kept the card that was on the job ticket, we keep a sample of every job that goes out".

HELEN MORELAND,

a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

That she was an employe of the Metropolitan Engraving Company and was office manager of said company in May, 1933; that she knows a man by the name of Al Ringer, but does not know Mr. Taylor or Mr. McKnight; that she saw Mr. Ringer in the month of May, 1933; that Mr. Ringer came in the office after he had placed an art order in the shop for a cut and asked for it; that they made a cut for Mr. Ringer and delivered it to the Excel Printing and Lithograph Company; that the messenger boy delivered it to the Excel Printing Company with which Mr. Gartner was connected; that she saw the cut before it was delivered; that she does not know where the original cut now is; that it is customary to deliver the original engraved cut to the person who ordered it; that they kept a

press copy of it; that plaintiff's Exhibit No. 13 contains an impression of the cut made by them and was made from the cut; that the typed matter was not in the cut; that the illustration was there but all of the type work was set up by the typesetter; that none of the printed matter was upon that sketch when it left their establishment; that their firm was paid for this work as near as she can remember. "Q I show you here government's Exhibit No. 8 and ask you if you have ever seen this card before or anything similar to that heretofore? A. Yes, we made an electro for the original plate of that thing. I believe they brought the plate back and sawed off that part of it, I am not sure." The witness identified plaintiff's Exhibit No. 16 for identification, as two checks received by her company in payment for services rendered; that one of the checks was in payment of engraving and the other for the cut "that we cut off, the electro"; that they made out invoices for the work done.

The two checks, plaintiff's Exhibit No. 16, were received in evidence and marked plaintiff's Exhibit No. 16, over the objection of the defendant that no foundation had been laid for their reception in evidence, and that it had not been shown that they had been authorized by the defendant McKnight or given under his instructions or directions. The defendant McKnight noted an exception to the court's ruling.

Plaintiff's Exhibit No. 16 is in words and figures following:

(Testimony of Helen Moreland)

(Check)

"No. 106

Los Angeles, Cal. 5/16/1933

PAY TO THE ORDER OF

Metropolitan Engravers, - - - - $11.72

Eleven & 72/100, - - - - - - - - - - - - DOLLARS

Wilshire LaBrea Branch

To SEABOARD NATIONAL BANK 16-303

5501 Wilshire Blvd., Los Angeles

L. Simmons

(Perforation)

PAID 5 16 33

(endorsed on back)

Pay to the order of

Union Bank & Trust Co. of

Los Angeles

METROPOLITAN ENGRAVERS, Ltd.

(Check) No. 120

Los Angeles, Cal. 5/19 1933

PAY TO THE ORDER OF Metropolitan

Engravers, - - - - - - - - - - - - - - - $22.13

Twenty-two & 13/100, - - - - - - - - - - DOLLARS

Wilshire LaBrea Branch

To SEABOARD NATIONAL BANK 16-303

5501 Wilshire Blvd., Los Angeles L. SIMMONS

(perforation)

PAID 5/23/33

(Endorsed on back)

Pay to the order of

Union Bank & Trust Co.

of Los Angeles

METROPOLITAN ENGRAVERS, LTD."

(Testimony of Rodman Robeson)

The witness further testified that Mr. Ringer told her not to mail any bills, that he would pay them himself; that she was instructed not to mail the bill out by Mr. Ringer.

"Q BY THE COURT: Before we leave that subject, were the bills paid that way?

A Yes, sir, there was not any question; there was only one that ran over. Mr. Ringer generally paid in a few days; he used to come in after them.

Q He came personally and delivered the checks to you there?

A Yes, sir."

CROSS-EXAMINATION

That there were several jobs done there, some of which were paid in cash and some by check; they were brought in by Mr. Ringer and Mr. Ringer brought the money either in the form of a check or cash; that she couldn't exactly say what those checks were for; that she would have to refer to the invoices; that the orders that came in there were tendered to her; that she did not know Mr. Taylor or ever had any conversation with him.

RODMAN ROBESON,

a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

That in May, 1933, he was employed by the defendant McKnight; that he performed political work in the office during his campaign for reelection as councilman; that the offices were located originally at 6300 Wilshire Blvd. at the corner of McCarthy Drive; that he worked for Mr. McKnight five weeks; that he knows the defendant Taylor and also Mr. Stein, both of whom were working at the campaign headquarters.

(Testimony of Rodman Robeson)

"Q. Can you give us some general description of the arrangement of the office there?

A. The entrance to the building was in the middle of a large room, approximately 15 or 18 feet deep and 24 or 26 feet long, the doorway being, the entrance door being in the middle of the 26 feet, the 24 to 26 feet in length. Leading out of one corner, diagonally from the front door on the right, was a small door leading into a hallway which extended back, oh, approximately 30 feet, and from this hallway on the right hand side there were three rooms and a bath room."

That he went to work for Mr. McKnight early in May, 1933, immediately following the closing of the primary campaign; that on the 2nd or 3rd day after his employment he was given instructions by Mr. Taylor that in addition to the precinct work that he was employed for originally he was to look after the accounting of the office; that nobody signed the checks up there for the salary and expenses in the campaign; that nobody to his knowledge signed the checks to pay the employes in the campaign for Mr. McKnight; that he received instructions concerning his work from Mr. McKnight the second or third day after his employment; that he was instructed to take charge of the precinct work.

"Q. I show you here Government's Exhibit 8, and ask you to look at that, the subject matter of that, have you ever at any time seen the subject matter of any such card as that at the headquarters out there, Mr. Robeson.

A. Yes, sir."

The witness further testified that he saw the subject matter during his employment there, approximately the 15th or 20th of May, 1933; that he never received any

instructions from Mr. McKnight or Mr. Taylor regarding the subject matter appearing on plaintiff's Exhibit No. 8; that he received instructions from Mr. McKnight several times during his employment concerning cards.

"Q Now tell us what cards you have reference to?

A. Well, I know as one of my duties I made a request for cards to be used—I made a request for a number of cards, cards for automobiles, and employment cards that were signed by the employes to be approved by the office, and cards of various descriptions."

The witness further testified that the initials appearing on plaintiff's Exhibit No. 14 are those of R. E. Taylor; that he received instructions from Mr. Taylor concerning cards; that at the beginning of his employment he was instructed to have an employe's card made out by every person in the employ of the campaign, but he didn't think he was ever instructed by Mr. Taylor to buy any other cards; that during the course of his employment approximately between the 10th and 20th of May, he was instructed by Mr. McKnight "to make out a request for the printing of cards"; that he knew a Miss Hart; that he was instructed by Mr. Stein to pick up some cards that were delivered to her house, some postcards and several large bundles; that he took them to an address in Hollywood; that plaintiff's Exhibit No. 1 is not a fac simile of the cards that he was told to pick up from Miss Hart and deliver to the Hollywood address. Plaintiff's Exhibit No. 8 is a fac simile of the cards that he picked up from

Miss Hart. That Mr. Stein further instructed him to go back to the Hollywood address the next morning and help destroy them.

The witness further testified that he observed Mr. Taylor daily about the headquarters.

"Q. What did you observe that he did in the ordinary course of business in the office?

A. Handled the finances of the campaign.

Q. He handed out the checks to the employes?

A. No checks were handed.

Q. Did you ever see anyone paid up there for their work?

A. Yes, sir. Paid in cash.

Q. BY THE COURT: Who made the payments, if anyone, out there?

A. I made them myself. Those payments were for salary.

Q. That was the only kind of payments made at the campaign headquarters?

A. No, sir; bills—daily we submitted to Mr. Taylor a list of requisitions that had been approved which were ready for payment."

That checks were made out for the amount called for by Mr. Taylor; the checks already were signed; the signature appearing on the checks was that of L. Simmons; that Mr. Taylor would look over the statement submitted to see if it had the proper approval, sometimes he would write the checks to cover and other times he would state

he didn't have the money, that the bills could wait a day or so; that on the occasions that he wrote checks he would make a complete notation in his check book; that the majority of instances Taylor handed him the check and the requisition. "Q. BY THE COURT: So that on all of these occasions all that Mr. Taylor did with those checks that were signed by some person, you simply submitted your statement to him and he would fill out the body of the check, the subject matter, as appeared thereon, and hand you the check with the signature and the statement? A. Precisely."

The witness further testified that at the time he was going out to destroy the cards mentioned that he had a talk with Mr. McKnight; that Mr. McKnight started to give him instructions regarding some particular work he wanted done and "I told him I had a job for Mr. Stein" and he told him what it was and Mr. McKnight said "Oh."

The witness identified plaintiff's Exhibit No. 17 for identification as four checks that he had received from Mr. Taylor in the campaign headquarters and that the endorsement appearing on the back of each of the checks respectively was his own; that the checks were reimbursements "for work in connection with the purchase of supplies, etc." in connection with the McKnight campaign at campaign headquarters.

Plaintiff's Exhibit No. 17 is in words and figures following:

(Testimony of Rodman Robeson)

(Check) "No. 104

Los Angeles, Cal., 5/16 1933

3 W. L. B. May 16, 1933

16-303

PAY TO THE ORDER OF R. ROBESON - - - - $5.89
Five & 89/100 - - - - - - - - - - DOLLARS

Wilshire LaBrea Branch
To SEABOARD NATIONAL BANK 16-303
5501 Wilshire Blvd., Los Angeles L. SIMMONS

(perforation)

PAID 5 15 33

(endorsed on back)

R. ROBESON

(Check) No. 118

3 W. L. B. May 18, 1933

16-303 Los Angeles, Cal. 5/18/33

PAY TO THE ORDER OF R. ROBESON, - - - $6.12
Six & 12/100, - - - - - - - - - - DOLLARS

Wilshire LaBrea Branch
To SEABOARD NATIONAL BANK 16-303
5501 Wilshire Blvd., Los Angeles L. SIMMONS

(perforation)

PAID 5 18 33

(Endorsed on back)

R. ROBESON

(Testimony of Rodman Robeson)

No. 107

3 W. L. B. May 16 1933 Los Angeles, Cal. 5/16/33
16-303

PAY TO THE ORDER OF R. ROBESON, - - - $6.00
Six & no/100, - - - - - - - - - - - DOLLARS

Wilshire LaBrea Branch
To SEABOARD NATIONAL BANK 16-303
5501 Wilshire Blvd. Los Angeles L. SIMMONS

(perforation)
PAID 5 16 33

(endorsed on back)
R. ROBESON

- - - -

No. 111

Los Angeles, Cal. 5/16 1933

3 W. L. B. May 16 1933
16-303

PAY TO THE ORDER OF R. ROBESON - - - $20.00
Twenty & no/100, - - - - - - - - - DOLLARS

Wilshire LaBrea Branch
To SEABOARD NATIONAL BANK 16-303
5501 Wilshire Blvd., Los Angeles L. SIMMONS

(perforation)
PAID 5 16 33

(endorsed on back)
R. ROBESON"

(Testimony of Rodman Robeson)

The witness further testified that Mr. McKnight told him that Mr. Tayor's capacity was that of "fiscal agent"; that Mr. Taylor's instructions were that "nothing was to be purchased except with his approval or with the approval of Mr. McKnight"; that the requisitions in most cases were given to him, when he typed them in the form "which I have identified and submitted them to the person asking for them for his signature and in some cases I didn't get that signature and I signed his name for him and I then submitted them to Mr. McKnight on the following morning for approval; the goods were ordered and upon receipt of the goods I okayed the bill and attached the requisition and endeavored to get a check for payment"; that the bill and requisition went to Mr. Taylor; that Mr. Taylor either issued the check at the time or held it for payment in his office.

"Q BY THE COURT: Did you ever at any time have any requisition go through for cards containing the subject matter of the exhibit I now show you, Government's Exhibit No. 1?

A I couldn't state that I definitely—May I have that question again?"

The witness further testified that he *purchase* 2000 postal cards at the United States Post Office at the branch at LaBrea and Wilshire; that he couldn't state who instructed him to make the purchase; that he was instructed to complete the purchase of cards for "getting out of the mailing list, and to see that they went out"; that when he purchased the cards he took them back to the office and he distributed them to the people working in the office to get out the mailing list; that he did not give Miss Hart any of these 2000 postal cards. The witness further testi-

(Testimony of Rodman Robeson)

fied *that gave* Miss Hart some blank cards to take home and address, although they were blank postal cards; that he gave her a mailing list containing the names of the registered voters in a given precinct and the approximate number of cards; that when she had finished "the job I gave her back her receipt for it"; that to the best of his knowledge when the cards were returned the addresses were not typewritten but "hand written"; that there was nothing on the back of the cards at that time; that he put nothing on the back of the cards later; that he collected them and stored them until he was asked for them; that he couldn't say who asked him for them, but that he delivered them to Mr. Ringer; that he did not afterwards receive them again.

"Q Is that the same man that went down to the post-office with Miss Hart, you have been setting here and heard the testimony?

A. Last Friday, yes, sir.

Q. That was the same fellow?

A. Yes, sir."

The witness further testified that plaintiff's Exhibit No. 18 for identification was given to him by Mr. Taylor at the office at 6300 Wilshire Boulevard, the latter part of May, with instructions to take it to the bank; that he went to the bank and endeavored to get all of the cancelled checks. Plaintiff's Exhibit No. 18 is in words and figures following:

(Testimony of Rodman Robeson)

"May 29th, 1933.

Seaboard Natl. Bank,

Gentlemen:

Kindly deliver to bearer, all of my cancelled checks to date.

L. SIMMONS"

The witness further testified that the date following his first visit to the bank he obtained the cancelled checks; that he didn't examine them to see if they were intact; that he also received the bank's statement along with the cancelled checks.

CROSS-EXAMINATION

The witness further testified that Mr. McKnight told him shortly after he went to work that Mr. Taylor was going to be in charge of finances of the campaign. That he was instructed by Mr. Stein to go out and destroy cards which were true replicas of Exhibit No. 8 and Exhibit No. 5; that he assisted in destroying Exhibit No. 5; that Exhibit No. 8 was destroyed, that is, all of the replicas; that they were never used in the campaign so far as he knew and were never put in the mails directly or otherwise; that on the morning he went out to destroy the replicas of Exhibit No. 8 he informed Mr. McKnight that he had something to do for Mr. Stein and that all that was said by Mr. McKnight was "Oh".

The witness further testified that there was a certain circumstance in which it was revealed to him that Mrs. R. E. Taylor was L. Simmons; that Mr. Taylor in Mrs. Taylor's presence handed him a check bearing the endorsement of "L. Simmons" which purported to be a campaign

(Testimony of Rodman Robeson)

contribution; that he was instructed to deposit it in the bank on his way back to the office; that he deposited the check at the Seaboard National Bank at Wilshire and LaBrea in the name of "L. Simmons"; that subsequently to that time he was informed that L. Simmons was Mrs. Taylor's name before she married Mr. Taylor; that he made deposits three or four times in the name of "L. Simmons".

"BY THE COURT: Who did you see at this house on Hollywood Boulevard when you destroyed these cards that were out there?

A. There was a lady whom I didn't know that was porported to be Mrs. Stein".

That when he arrived at the address there was a person there burning the cards and "I jumped in and helped that person"; that he had never see that person at any other place; that the type of card he saw there was approximate 5 by 7 and that most of them had been addressed in pen and ink to various persons and there was printed matter and illustrations of the type commonly known as "correspondence type"; that he never saw any of those cards of similar import or a fac simile thereof at headquarters after that until they were presented in court.

MR. DICKSON: That is the government's case, your Honor.

The court thereupon withdrew from consideration of the jury the Fifth Count of the Indictment.

MR. SMUCKLER: I wish to make a motion for a nonsuit on the first count, and move for a dismissal on the ground that the government has not *prove* a case of conspiracy, and as to counts 2, 3, and 4 we make the same motion, because nowhere in the testimony have they shown that Mr. Taylor had anything to do with the matters charged in counts 2, 3, and 4.

MR. JONES: I desire to make a motion on behalf of the defendant McKnight, that the government be compelled to elect which count they will ask for a conviction on, that is one motion, and I further move in behalf of the defendant McKnight as to count 1, that the jury be instructed to return a verdict of not guilty upon the ground, and for the reason, that there is no showing of knowledge on the part of the defendant McKnight or that any agreement was ever entered into in violation of any law, and furthermore, on the further ground, that the evidence shows that there never was any agreement or understanding that the material contained on Exhibits 2, 3, 4, and 5, or that any of the material contained upon Exhibit 8, was to be placed upon a postal card and deposited in the United States mail, and for the same reasons also ask that the jury be instructed to return a verdict of not guilty against the defendant McKnight upon each and every one of the counts contained in the indictment.

THE COURT: I have already ruled on count 5. The motion for an election is denied.

MR. JONES: Exception.

THE COURT: The motion for a nonsuit as to each defendant will be denied.

MR. JONES: Exception.

MR. JONES: The defendant McKnight will offer no testimony. I would like to renew the motion I made yesterday.

THE COURT: The record will show that all motions are renewed and are denied.

MR. JONES: Exception.

Thereupon the court instructed the jury; said instructions being in full as follows:

Gentlemen of the jury, the Court instructs you as follows:

This case should be considered, and your deliberations should be carried on with a view to reaching an agreement without compassion, prejudice or sympathy for or against either of the defendants on trial.

There were originally three defendants who had submitted an issue to the Court upon the indictment that was found against them by the Grand Jury. One of those defendants, Stein, testified as a witness in the case before you, and he has disposed of his case, so far as you are concerned, and so far as his guilt is concerned now, by entering a plea of what the law calls nolo contendere. That means, substantially, gentlemen, that Ste*a*in came into court of his own volition and did not contend with the Government on the facts that it has charged against him. It is not just the same as a plea of guilty, but under that plea the Court has a wide discretion, the same discretion that it would have upon a plea of guilty so far as the imposing of sentence is concerned. In effect it is as I have stated, that the defendant Stein does not contend with the Government on the facts that are pleaded against him, but he does deny that he was guilty of the precise intent that the Government alleges; and the intent that is

alleged in these crimes that are charged against the three defendants is a felonious intent, an unlawful, criminal, felonious intent.

You are the sole and exclusive judges of the full effect of the evidence that has been addressed to you. You are the sole and exclusive judges of the credibility of the witnesses who have testified in the case, and the character of the witnesses, as shown by the evidence, should be taken into consideration for the purpose of determining their credibility and the fact as to whether they have spoken the truth. You may scrutinize not only their appearance while upon the witness stand, but their relation to this case as well, and also their degree of intelligence. In determining the credibility of a witness you have a right to consider his bias or prejudice for or against any of the parties to the case, and the reasonableness or unreasonableness of his or her statements, the strength or weakness of his or her recollection and the fact that he or she has a feeling for or against the defendants or either of them who are now on trial, the defendants Taylor and McKnight by contradictory evidence, or by any other fact that enables you to arrive in your own mind as to the truth and veracity of the testimony of any of the witnesses who have testified in the case.

A witness false in one part of his or her testimony is to be distrusted in others, and when you are convinced that a witness has stated that which is untrue not as a result of mistake or inadvertence but wilfully with a design to deceive, you may treat all of the testimony of such witness with distrust and suspicion and reject it all unless you are convinced notwithstanding his or her base character that he or she has in other particulars sworn to the truth.

The defendants are accomplices in the acts that are charged in the second or fourth counts of the indictment. They are co-conspirators in the acts that are charged in the second count of the indictment. An accomplice is one who knowingly joins with another in the intentional commission of a criminal offense. While you should scan the testimony of an accomplice and a co-conspirator with great scrutiny nevertheless if you believe it, if you are satisfied beyond a reasonable doubt as to its verity, you have a right to act upon it, even to the extent of finding a verdict of guilty against a person in the federal court, because the rule in the federal court is not that testimony of an admitted accomplice or co-conspirator must be corroborated by other evidence, but it may be sufficient if you believe it, if it satisfies you beyond a reasonable doubt of its truthfulness to warrant you in a finding of guilty upon such testimony, even though it is uncorroborated. The full effect of the evidence, however, is for you, and the credibility that you give any witness is for you. You must determine that according to your own conscience and judgment under the rules of law as stated in this charge.

The defendant McKnight has not seen fit to take the witness stand. Now, you must leave that out of consideration. You must draw no deduction or inference because of the fact that he has failed, as is his privilege and right to take the stand, because he may exercise that privilege and right if he chooses. The jury is not to draw any inference or indulge in any presumption because of the fact that he has seen fit to exercise his constitutional right not to take the witness stand in his own behalf. *It* has exercised his constitutional right to remain silent and

the law gives that to any man who is charged with a criminal offense.

The testimony of the defendant Taylor is not to be weighed, judged or analyzed or considered by any test or rules other than those you have been instructed to apply to the testimony of other witnesses who have testified in the case with the exception of the testimony of the witness Stein, and the Court has given you specific instructions concerning his testimony, and in your consideration of the testimony of the defendant Taylor it is not to be weighed or considered or determined by any other rule than the rule that you have been instructed to apply to the testimony of all witnesses who have testified in the case. The same presumptions are to be implied in favor of the defendant Taylor as you have been instructed to apply to the testimony of every witness who has testified in the case other than the witness Stein.

The first count in the indictment, gentlemen, we have been discussing all the counts in the indictment, but the first count of the indictment is brought under a section of the Federal Criminal Code and Act of Congress that is known as Section 37, which in so far as it is applicable here reads as follows: 'If two or more persons conspire, either to commit any offense against the United States or to defraud the United States in any manner or for any purpose or one or more of such parties do any acts to effect the object of said conspiracy, each of the parties to such conspiracy shall be punished in the manner and form as prescribed in the statute.' Now, the first count charges a conspiracy, a conspiracy to violate a certain other law of the United States, and a certain other Act of Congress. That Act of Congress is known as Section

212 of the Criminal Code of the United States, and in so far as that statute is applicable to this case it reads as follows: 'All matters otherwise mailable by law upon the envelope or outside cover or wrapper of which or any postal card upon which any delineation epithet, terms, or language of an indecent, lewd, lascivious, obscene, libelous, scurrilous, defamatory or threating character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, may be written or printed or otherwise impressed or apparent, are hereby declared nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office, nor by any letter carrier, and shall be withdrawn from the mails under such regulation as the Postmaster General shall prescribe. Whoever shall knowingly deposit or cause to be deposited for mailing or delivery anything declared by this section to be nonmailable matter or shall knowingly take the same or cause the same to be taken from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same shall be punished in the manner and form as prescribed in the statute.'

Under the language as contained in the first count of the indictment you are instructed that it charges conspiracy between four persons, other persons who are alleged to be unknown to the Grand Jury but in so far as the evidence in this case has been produced it refers to four persons, McKnight, Taylor and Stein, and another man named Ringer, Al Ringer. All Ringer is not named as a defendant in the indictment, but the Grand Jury classifies him as a co-conspirator. In other words, it is alleged in count 1 in the indictment that these four men

entered into a conspiracy to use the mails of the United States in a manner denounced by the statute which I have read to you concerning nonmailable matter, and that certain overt acts were committed in furtherance of that common object and understanding that is alleged to have been entered into and agreed to be the four men.

I have read to you the definition of conspiracy that where two or more persons united together unlawfully to violate a law of the United States, and anyone of them commit an overt act in furtherance of the same common understanding or agreement they are all guilty of the crime of conspiracy.

There are certain overt acts alleged in the first count of the indictment, gentlemen, that I will not read to you. If there is no objection on the part of the defendant, I will permit you to take the indictment to your jury room with you and examine it.

Suffice it to say at this time that there are a number of overt acts alleged. Some of them there has been evidence directly to establish and others there has been no evidence directly to establish. You will bear in mind those things when I read to you the instructions concerning the first count in the indictment.

Now, the fifth count in the indictment, gentlemen, is not before you. The Court has withdrawn that from your consideration because of the insufficiency of the evidence to show the mailing in respect to that postal card as set out in the fifth count of the indictment so that you will not give it any consideration.

The second, third and fourth counts of the indictment do not charge the defendants either Taylor or both Mc-

Knight and Taylor with conspiracy, but they charge them with a violation of the Acts of Congress that I have read with respect to nonmailable matter. So that you will observe and you are instructed to observe the difference between the charge that is contained in the first count of the indictment which charges these men with conspiracy to violate this nonmailable, so-called, statute, of the United States, and the charge that is contained in the second, third and fourth counts of the indictment which does not charge them with conspiracy to do so but charges them with actually having done so. Bear in mind that difference.

There is a principle of law that you are instructed to apply in this case if you believe from the evidence its application is relevant and that is the principle of aider and abetter or principal and accessory. The statute says that any person who assists any person to mail or cause to be mailed any of the nonmailable matter that is denounced by the Act of Congress shall be amenable to the law as has been read to you from the statute. Any person who aids, abets, counsels, encourages or assists or procures another to commit a criminal offense if he does so intentionally and knowingly shall be prosecuted and tried the same as the principal, so that one who knowingly and intentionally participates with another in the commission of a criminal act, or who knowingly aids, counsels, encourages, or procures another to commit an act constituting a criminal offense is to be dealt with as is the principal himself.

The law under which the first count of the indictment in this case is drawn provides that when two or more persons conspire any offense against the United States and one or more of them does any act to effect the object

of the conspiracy each of the parties to such conspiracy is guilty.

In order to establish the crime charged it is necessary to prove first that the conspiracy or agreement to commit the particular offense against the United States as alleged in the indictment be established, and secondly, to prove further that one or more of the parties engaged in the conspiracy has committed some act with respect to effecting the object thereof as alleged in the first count of the indictment.

To constitute a conspiracy it is not necessary that two or more persons should meet together and enter into an express or formal agreement for the unlawful adventure or scheme, or that they should directly by words or in writing state between themselves or otherwise what the unlawful plan or scheme is to be, or the details thereof, or the means by which the unlawful combination is to be made effective. It is sufficient if two or more persons in any manner, or through any contrivance positively or tacitly come to a mutual understanding to accomplish a common and unlawful design.

Now, the common and unlawful design that is charged in the first count of the indictment that McKnight, Taylor, Stein and Ringer entered into was the mailing or delivery of the non-mailable matter that is set out in that count of the indictment and that is described in the statute I read to you concerning non-mailable matter.

In other words, when an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end work together in any way in furtherance of the unlawful scheme every one of said persons becomes a member of the conspiracy.

The success or failure of the conspiracy is immaterial, but before the defendants or either of them may be found guilty of the charge it must appear beyond a reasonable doubt that a conspiracy was formed as charged in the first count of the indictment, and that the defendants now before you or either of them or both of them were active parties thereto.

In order to warrant you in finding a person guilty of the offense charged, or either of them, it is necessary that you be satisfied beyond a reasonable doubt that a conspiracy as charged in the first count of the indictment was entered into between two or more of the defendants and one of the defendants and one Al Ringer to violate the law of the United States in the manner described in the indictment, that is to say, to specifically violate Section 335 of the Criminal Code of the United States as read to you.

It is necessary further that in addition to the showing of the unlawful conspiracy or agreement, the Government prove to your satisfaction beyond a reasonable doubt that one or more of the overt acts described in count 1 of the indictment was done by one or more of the defendants, or at their direction, or with their aid, the defendants now on trial.

Under the charge made in count 1 of the indictment the conspiracy constitutes the offense and it must be made to appear from the evidence beyond a reasonable doubt before either defendant now on trial can be convicted that such defendant was a party to the conspiracy and unlawful agreement charged, and that he continued to be such up to the time that overt acts were committed, if the evidence shows that there were any such. The mere fact

that either or any of the defendants named may have been engaged in the performance of any of the acts charged in the indictment as overt acts would not authorize the conviction by reason of that fact alone, but it is necessary to show that such defendant or defendants were parties to the conspiracy and unlawful agreement before their guilt of the offense charged here is made out.

Each party to a conspiracy must be actuated by an intent to promote the common design.

I have previously stated in the charge, and now restate in the charge, that the common design alleged to have been the single purpose or agreement or understanding of the two defendants now on trial with others charged in the first count of the indictment was to violate the United States statute concerning nonmailable matter.

If persons pursue by their acts the same unlawful object, one performing one act and the second another act, all with a view to the attainment of the object they are pursuing, the conclusion is warranted that they are engaged in a conspiracy to effect that object. Cooperation in some form must be shown. There must be an intentional participation in the transaction with a view and purpose to further the common design. If a person understanding the unlawful character of a transaction encourages, advises or in any manner with a purpose to forward the enterprise or scheme assists in its prosecution, he becomes a conspirator. And so a new party coming into a conspiracy after its inception, with knowledge of its purpose and object, and with intent to promote the same, becomes a party to all of the acts done before his introduction to the unlawful combination, as well as the acts done afterwards. Joint assent and joint participa-

tion in the conspiracy may be found like any other fact as an inference from facts proved.

Where the existence of a criminal conspiracy has been shown every act or declaration of each member of such conspiracy, done or made thereafter pursuant to the concerted evidence against each of them. On the other hand, after a conspiracy has come to an end, either by the accomplishment of the common design or by the parties abandoning the same, evidence of acts or declaration thereafter made by any of the conspirators can be considered only as against the person doing such acts or making such statements. The declaration or act of a conspirator not in execution of the common design is not evidence against any of the parties other than the one making such declaration.

The evidence in proof of the conspiracy may be circumstantial. Where circumstantial evidence is relied upon to establish the conspiracy or any other essential fact, it is not only necessary that all the circumstances concur to show the existe*b*ce of a conspiracy or fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion. That is, you are to consider all of the circumstances and conditions shown in evidence and if it appears to you as reasonable men that even though there is no direct evidence of the actual participation in the alleged offense by the defendants, or either of the defendants, a reasonable inference from all the facts and circumstances does to your mind beyond a reasonable doubt show that the defendants or some of them were parties to the conspiracy as charged you should make the deduction and find accordingly.

It is not necessary that it be shown that any person concerned in the alleged conspiracy profited by the thing which he did, but if any of the defendants with knowledge that the law was designed to be violated in the particular manner charged in the indictment aided in any way by affirmative action in the accomplishment of the unlawful act they would be guilty. To this statement there is one exception, and that is if before any overt act has been committed on the part of any conspirator or at his suggestion or with his aid and participation any such conspirator withdraws from the conspiracy and wholly disassociates himself from the project or the carrying out thereof he ceases to be a conspirator and is without guilt as such, and before you can convict either one of the defendants of the charge alleged in Count 1 the evidence must prove to your satisfaction beyond a reasonable doubt that the mailing of the matter referred to in count 1 of the indictment was done in pursuance of some plan or design previously agreed upon between such defendants and some onr or more of the persons referred to in count 1 of the indictment as defendants or as conspirators. If you find beyond a reasonable doubt from the evidence that the defendant McKnight wrote any defamatory matter contained in any card, that unless you further find from all of the evidence that he at the time of writing any such matter contained in said cards, or approving the same, prior to the deposit of the postal card mentioned in counts 2, 3, and 4, he did so with full knowledge upon his part that said matter was to be printed upon said postal card and was intended to be placed in the United States mail for delivery as charged in said indictment, you cannot find the defendant McKnight guilty.

You are the sole and exclusive judges of the evidence as to whether or not any matter contained in any post card described in any count in this indictment is libelous and defamatory.

The evil character of the matter alleged to have been published on the post card must be reasonably apparent or discernible upon its face, and if you find that the matter contained on the post card is not objectionable on its face then you cannot search for an undisclosed motive or intent on the part of the person who compiled the post cards and sent them out in order to convict the defendant. The words libelous, scurrilous and defamatory used in the statute with which the defendants are charged, with having violated must be taken solely according to their ordinary meaning and said words are defined as follows:

Defamatory is defined by Webster as the taking of another's reputation, or words which produce any perceptible injury to the reputation of another are called defamatory.

Libelous is defined as meaning written words which impute that any person has been guilty of any crime, fraud, dishonesty, immorality, vice or dishonorable conduct or has been accused or suspected of any such conduct, and words are libelous which hold any person up to the contempt, hate or scorne or ridicule and which thus engenders an evil opinion of an individual in the minds of right thinking men, tend to deprive him of their friendly intercourse and society.

You therefore must find beyond a reasonable doubt before you can convict any of the defendants that the language contained upon any post card introduced into

evidence and set forth in the indictment was defamatory or libelous or calculated and obviously intended to reflect injuriously upon the character or conduct of said Cunningham, and unless you so find your verdict must be not guilty as to each and every count contained in the indictment, as to each defendant or both of them.

And the essential elements of the offense charged in the conspiracy count in the indictment is that the defendant James S. McKnight actually intended to enter into an agreement with some one or more of the persons mentioned in count 1 of the indictment to do the things charged therein. Unless it is proved by the evidence beyond a reasonable doubt that the defendant James S. McKnight actually intended to do the things as charged in the indictment with some one or more of the persons mentioned as conspirators in the indictment, the defendant James S. McKnight should be found not guilty of conspiracy as charged in count 1 of the indictment regardless of what else, if anything, is established.

It is not sufficient for you to find that the defendant Robert E. Taylor engaged in some activity in connection with the preparation or mailing of the matter referred to in count 1 of the indictment, but you must go further and find before you can convict him of the charge alleged in count 1 that such activity that you may find he did engage in in that connection was done in pursuance of some common plan and design previously agreed upon between himself and some one or more of the other persons referred to in said count 1 of said indictment.

You are further instructed that in order to find the defendant Robert E. Taylor guilty of the offense charged

in count 1 of said indictment that the preparation and mailing for delivery of the matter referred to in said indictment was the result of a previously formed design, understanding or agreement between certain persons named in count 1 of the indictment as defendants or conspirators to cause said matter to be so prepared for mailing and mailed as charged in said indictment, and you must further find that the said Robert E. Ta*u*lor was one of the parties who entered into said common design or previous arrangement and unless you do so find beyond a reasonable doubt that the said Robert E. Taylor was one of the parties who conspired together and entered into such common design, plan or arrangement, it would be your duty to acquit the said Robert E. Taylor of the offense charged in count 1 of said indictment, even though you may find that said matter was caused to be prepared and mailed.

The gist of the offenses charged in each of counts 2 to 4 inclusive, is knowingly depositing or causing to be deposited for mailing or delivery of nonmailable matter and that said counts 2 to 4 inclusive, do not charge any offense for writing or compiling any alleged defamatory matter which may be contained therein, or in publishing in any manner other than by mailing or causing to be mailed the post cards, Exhibits 1, 3 or 4, any alleged defamatory matter of or concerning said Cunningham. In reaching a verdict in this case you should at all times observe this distinction and determine first whether the said McKnight wrongfully, wilfully, knowingly and feloniously did enter into an agreement or conspiracy with others to mail the post cards or any of them identified in this case as Exhibits 2 to 4. Unless the evidence convinces you be-

yond a reasonable doubt that he did mail or cause to be mailed the particular post cards set forth and described in each particular count of the indictment you must find him not guilty as to each particular count 2 to 4, inclusive, and unless you find beyond a reasonable doubt that he did mail or cause to be mailed any post card described in any particular count from 2 to 4 you must find him not guilty on any count wherein you find that he did not mail or cause to be mailed any post card described in said count. The offense charged in each of counts 2 to 4, inclusive, is knowingly depositing or causing to be deposited for mailing or delivery nonmailable matter as I have defined it, and you are instructed that counts 2 to 4, inclusive, do not charge any offense for writing or compiling any alleged defamatory matter that may be contained therein, or in publishing any alleged defamatory matter of and concerning the said Cunningham, except as it is charged that publication was made by mailing or causing to be mailed the postal cards, Exhibits 1, 3 and 4.

If after having heard all of the evidence there is a reasonable doubt remaining in your mind as to the guilt or innocence of the defendants, or either of them, then you should acquit them. It is not sufficient to establish a probability, even though a strong one, arising from the doctrine of chance that the fact charged is more likely to be true than the contrary, but the evidence must go further and establish the truth of the fact to a reasonable and moral certainty that convinces the understanding, and satisfies the reason and judgment of the jurors who are bound to act upon it conscientiously. While neither defendant can be convicted unless his guilt is established beyond a reasonable doubt, still the law does

not require demonstration, that is, such degree of proof as to exclude the possibility of error because such proof is rarely possible.

Now, gentlemen, when you retire to the jury room you will select one of your number as foreman. Your verdict must be in writing, signed by your foreman, and when found by you must be returned into court. It requires the unanimous concurrence of all the jurors to find a verdict.

Are there any exceptions, gentlemen?"

We except to the refusal of the court to give instruction No. 49 requested by the defendant James S. McKnight, for the reason that the matters therein suggested are a proper statement of the law and have not been by the court duly covered or presented to the jury in its giving of such instructions relating directly to the questions to be determined by the jury, and are necessary to properly aid them in their determination of the questions submitted for their consideration, and which instruction is as follows:

"You are instructed that you cannot find the defendant McKnight guilty on a mere suspicion, and evidence of mere relationship between him and other defendants or persons not named in this indictment does not establish that there was a conspiracy. In order to find the defendant McKnight guilty you must find that he intentionally participated in the transaction and that he had an evil motive in having said post cards, identified as Exhibits 2 to 5, inclusive, mailed out, and unless you so find your verdict must be not guilty as to the defendant McKnight."

We except to the refusal of the court to give Instruction No. 40 requested by the defendant James S. McKnight, for the reason that the matters therein suggested are a proper statement of the law and have not been by the court duly covered or presented to the jury in its giving of such instructions relating directly to the questions to be determined by the jury, and are necessary to properly aid them in their determination of the questions submitted for their consideration, and which instruction is as follows:

"The jury is instructed that the presumption of innocence is not a mere form to be disregarded by the jury at pleasure, but it is an essential substantial part of the law of the land and binding on the jury in this case as in all criminal cases and it is the duty of the jury to give the defendant in this case the full benefit of this presumption, and to acquit the defendant unless evidence in the case convinces the jury of his guilt as charged beyond all reasonable doubt.

We except to the refusal of the court to give Instruction No. 21 requested by the defendant James S. McKnight, for the reason that the matters therein suggested are a proper statement of law and have not been by the court duly covered or presented to the jury in its giving of such instructions relating directly to the questions to be determined by the jury, and are necessary to properly aid them in their determination of the questions submitted for their consideration, and which instruction is as follows:

"The presumption of innocence goes with the defendant throughout the whole trial, even till the verdict is rendered, and this presumption of innocence outweighs

and overbalances all suspicions and suppositions, and can only be destroyed by proof beyond a reasonable doubt."

We except to the refusal of the court to give Instruction No. 50 requested by the defendant James S. McKnight, for the reason that the matters therein suggested are a proper statement of the law and have not been by the court duly covered or presented to the jury in its giving of such instructions relating directly to the questions to be determined by the jury, and are necessary to properly aid them in their determination of the questions submitted for their consideration, and which instruction is as follows:

"You are instructed before you can find the defendant McKnight guilty of Count One in the indictment that you must be satisfied from all of the evidence beyond a reasonable doubt that the defendant had actual knowledge and acquiesced and approved of the act of mailing said post cards, being Exhibits 2 to 5, inclusive, out, and that you cannot find him guilty unless the evidence convinces you beyond a reasonable doubt that there was an agreement to mail said Exhibits 2 to 5 out, and put the printed matter contained upon the post card upon the same. If the evidence does not satisfy you beyond a reasonable doubt that the defendant McKnight agreed with the other defendants named in the indictment or with others, that said printed matter now contained in said Exhibits 2 to 5 should be printed upon a post card on said exhibits and mailed out, then the defendant Mc-

Knight would not be guilty and you are further instructed that the defendant McKnight is not responsible for the conduct of other parties, if any there shall be found by you who mailed said post cards out, unless the evidence convinces you beyond a reasonable doubt that he did have knowledge and approve and acquiesce in the mailing out of said post cards.

We except to the refusal of the court to give Instruction No. 30 requested by the defendant James S. McKnight, for the reason that the matters therein suggested are a proper statement of the law and have not been by the Court duly covered or presented to the jury in its giving of such instructions relating directly to the questions to be determined by the jury, and are necessary to properly aid them in their determination of the questions submitted for their consideration, and which instruction is as follows:

"A reasonable doubt is that state of the case which, after an entire comparison and consideration of all the evidence, leaves the mind of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. It is not sufficient to establish a probability, even though a strong one; arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary, but the evidence must go further and establish the truth of the fact to a reasonable and moral certainty—a certainty that convinces and directs the understanding and satis-

fies the reason and judgment of the jurors, who are bound to act upon it conscientiously."

We except to the refusal of the Court to give Instruction No. 22 requested by the defendant James S. McKnight, for the reason that the matters therein suggested are a proper statement of the law and have not been by the Court duly covered or presented to the jury in its giving of such instructions relating directly to the questions to be determined by the jury, and are necessary to properly aid them in their determination of the questions submitted for their consideration, and which instructions is as follows:

"You are instructed that the presumption of innocence with which the defendant is at all times clothed is not a mere form to be disregarded by you at pleasure, but that it is an essential, substantial part of the law and binding on you in this case, and it is your duty in this case to give the defendant the full benefit of this presumption, and to acquit this defendant unless the evidence in the case convinced you of his guilt as charged beyond all reasonable doubt."

Thereafter, on, to-wit, the 19th day of December, 1934, the jury in said cause retired to consider their verdict. Thereafter on, to-wit, said 19th day of December, 1934, said jury returned its verdict, finding the defendant James S. McKnight guilty on Counts 1, 2, 3, and 4 of said indictment.

That thereafter, on, to-wit, the 19th day of December, 1934, the court sentenced the defendant James S. McKnight to a term of imprisonment in the County Jail of Los Angeles County for sixty days, to pay a fine of $500.00, and to stand committed until the same is paid, on the first count, and a term of six months in the Los Angeles County Jail on each of Counts 2, 3, and 4, said terms to run concurrently. Said sentences on the second, third and fourth counts were suspended and the defendant placed on two years probation.

That thereafter, on, to-wit, the 18th day of January, 1935, upon cause appearing therefor, the court entered its order extending the time of the defendant James S. McKnight to present his Bill of Exceptions, which said order is in words and figures following:

"On the above stipulation, IT IS HEREBY ORDERED that the defendant James S. McKnight shall have, and he is hereby given, an extension of time and term until February 10th, 1935, in which to serve and file his bill of exceptions and assignment of errors in the above cause.

PAUL J. McCORMICK

Judge of the above Court."

And thereafter, upon the .... day of ...., 1935, an order was duly entered of record, pursuant to stipulation of the parties hereto, that the original documents offered in evidence in said cause that are not herein reproduced be considered as incorporated and as a part of the

Bill of Exceptions in this cause as though actually a physical part thereof, and that the same be separately certified by the Clerk of this court to the United States Court of Appeals in and for the 9th Judicial Circuit of the United States.

Accordingly, the exhibits mentioned and in evidence herein, which are not set forth in this Bill of Exceptions, the same being separately certified by the clerk of this Court to the United States Court of Appeals in and for the 9th Judicial Circuit of the United States, are hereby incorporated and included herein and made a part hereof, the same as if actually herein set out in full. For as much as the matters above set forth do not as otherwise appear of record, this defendant tenders this, together with the said original exhibits, as his Bill of Exceptions which is all of the evidence received in said cause, and prays that same may be allowed, settled, signed and sealed by the Judge of this Court presiding at the trial, to-wit, by the said Hon. Paul J. McCormick, pursuant to the statute and the rules of court in such case made and provided, to be filed and made a part of the record herein, which is done according to law this 7th day of February, 1935, which is within the time provided for by the rules of court and statute appertaining thereto for the presenting, signing and filing of said Bill of Exceptions herein.

Paul J. McCormick
District Judge.

The foregoing Bill of Exceptions was presented this .... day of February, 1935, before the said Hon, Paul J. McCormick, Judge of this court, by the defendant James S. McKnight, for the approval, signature and seal of said Hon. Paul J. McCormick; said Bill of Exceptions was delivered to the counsel for the United States for examination as said counsel, and the approval, signature and seal of the same was taken under advisement by said court.

Paul J. McCormick
District Judge

It is hereby stipulated by and between counsel for plaintiff and defendant in the above entitled action that the foregoing Bill of Exceptions is a true and correct copy of all of the evidence and exhibits offered.

Dated February 7th, 1935.

Charles H. Carr
United States Attorney
Counsel for plaintiff

Otto Christensen
Counsel for defendant

[Endorsed]: Lodged Feb 1-1935 R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk Filed Feb 7-1935 R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk

[Title of Court and Cause.]

STIPULATION RE EXHIBITS

IT IS HEREBY STIPULATED by and between counsel for plaintiff and counsel for the defendant, that respecting the exhibits mentioned in the proposed Bill of Exceptions filed herein, an order may be entered by this court certifying all of the original exhibits mentioned in said bill of exceptions which are not reproduced therein as a part thereof, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

IT IS FURTHER STIPULATED that either party may withdraw any of their original exhibits in said cause by substituting in lieu thereof a photostatic or certified copy of any such exhibits that are withdrawn.

Dated this 1st day of February, 1935.

Charles H. Carr
Attorney for Plaintiff

Otto Christensen
Attorney for Defendant

[Endorsed]: Filed Feb 7-1935 R. S. Zimmerman, Clerk By Thomas Madden, Deputy Clerk

[Title of Court and Cause.]

ORDER

Pursuant to stipulation heretofore entered into between counsel for plaintiff and counsel for defendant, IT IS ORDERED, that the Clerk of this court be, and hereby is, directed to certify to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, all such original exhibits herein which are not incorporated in said Bill of Exceptions as a part thereof.

Dated this 7th day of February, 1935.

Paul J. McCormick
District Judge

[Endorsed]: Filed Feb 7th 1935 R. S. Zimmerman, Clerk By Thomas Madden Deputy Clerk

[Title of Court and Cause.]

STIPULATION

IT IS HEREBY STIPULATED by and between the above named plaintiff, acting through its counsel of record, and defendant JAMES S. McKNIGHT, acting through his attorney, Mark F. Jones, that the said defendant is hereby given an extension of time in which to file his Bill of Exceptions and Assignment of Errors and/or other documents connected with said appeal in the above entitled cause, to the 17th day of March, 1935.

Dated this 17th day of January, 1935.

Hugh L. Dickson
Attorney for plaintiff.

Mark F. Jones
Attorney for defendant, JAMES S. McKNIGHT.

ORDER

On the above stipulation, IT IS HEREBY ORDERED that the defendant JAMES S. McKNIGHT shall have, and he is hereby given, an extension of time and term until February 10, 1935 in which to file and serve his Bill of Exceptions and assignment of errors in the above cause.

Paul J. McCormick
Judge of the above Court.

[Endorsed]: Filed Jan 18 1935 R. S. Zimmerman, Clerk By Thomas Madden, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

UNITED STATES OF AMERICA,)
Plaintiff,) 11654-M Crim.
vs.) NOTICE OF APPEAL
JAMES S. McKNIGHT, et al,)
Defendants.)

JAMES S. McKNIGHT,
5301 West 8th Street,
Los Angeles, California,
Appellant.

MARK F. JONES,
622 C. C. Chapman Building,
Los Angeles, California,
Attorney for Appellant.

Offense: Mailing non-mailable matter and conspiracy to mail non-mailable matter.

Date of Judgment: December 19, 1934.

Brief description of judgment or sentence: Imprisonment in the County Jail of Los Angeles County for 60 days and a fine of $500.00 and commitment until paid on the first count, and a term of 6 months in the Los Angeles County Jail on each of counts 2, 3 and 4, to run concurrently and suspended for 2 years on probation.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

Dated December 20, 1934.

James S. McKnight
Appellant.

Grounds of Appeal:

1. That the evidence does not support the verdict.

2. That the Court erred in denying appellant's motion for a directed verdict.

3. That the Court erred in overruling appellant's demurrer.

4. That the Court erred in overruling appellant's plea in abatement.

5. That the Court erred in admitting evidence over the objection of the appellant and in excluding evidence offered by the appellant.

6. That the Court erred in giving certain instructions to the jury and in refusing to give certain instructions to the jury which were requested by appellant.

[Endorsed]: Rec'd copy within notice this 20th day of December, 1934. Peirson M. Hall, D. H. Atty for U. S. A. Filed Dec 20 1934 R. S. Zimmerman, Clerk, By Thomas Madden, Deputy Clerk.

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now James S. McKnight, in connection with his notice filed with the Clerk of the above entitled court, stating that he appeals to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, from the judgments and sentences entered in the above entitled cause against him on December 19th, 1934, and said defendant having duly given notice of appeal as provided by law, now makes and files with the said notice of appeal the following assignment of errors herein, upon which he will apply for a reversal of said judgments and sentences, and each of them, upon appeal, and which errors, and each of them, are to the great detriment, prejudice and injury of said defendant, in violation of the rights conferred upon him by law; and said defendant says that in the record and proceedings in the above entitled cause, upon the hearing and determination thereof, in the Central Division of the United States District Court for the Southern District of California, there is manifest error in this, to-wit:

I.

Said District Court erred in overruling the demurrer interposed to the bill of indictment herein, and the grounds of said demurrer and the grounds of said error in overruling it, were and are as follows:

1. That the said indictment and each count thereof does not state facts sufficient to charge the said defendants, or either of them,

(a) With having committed any crime or offense against the United States of America;

(b) The matters and things alleged in each and every count of said indictment do not constitute an offense against the laws of the United States of America.

2. That the said indictment, and each and every count thereof, in the manner and form as the same are therein set forth and stated, is not sufficient at law to constitute a public offense against the United States, under the provisions of Title 18, Sec. 335, U. S. C., or under the provisions of Title 18, Sec. 88; U. S. C., in that:

The matters therein alleged to have been deposited for mailing or delivery are not upon their face libelous, scurrilous, defamatory and calculated to and obviously intended to reflect injuriously upon the character and conduct of the said Stephen W. Cunningham.

II.

Said District Court erred in denying the motion made at the conclusion of plaintiff's case, and renewed at the conclusion of all of the evidence introduced in said cause, to direct a verdict of not guilty on the charge contained in Count I of the Bill of Indictment herein.

The grounds of said motion, and the grounds of said error in denying said motion, were and are: That the evidence adduced does not tend to prove that the defendant is guilty in manner and form as charged in said count, and is insufficient to support a verdict of guilty.

III.

Said District Court erred in denying the motion made at the conclusion of plaintiff's case, and renewed at the conclusion of all of the evidence introduced in said cause, to direct a verdict of not guilty on the charge contained in Count 2 of the Bill of Indictment herein.

The grounds of said motion, and the grounds of said error in denying said motion, were and are: That the evidence adduced does not tend to prove that the defendant is guilty in manner and form as charged in said count, and is insufficient to support a verdict of guilty.

IV.

Said District Court erred in denying the motion made at the conclusion of plaintiff's case, and renewed at the conclusion of all of the evidence introduced in said cause, to direct a verdict of not guilty on the charge contained in Count 3 of the Bill of Indictment herein.

The grounds of said motion, and the grounds of said error in denying said motion, were and are: That the evidence adduced does not tend to prove that the defendant is guilty in manner and form as charged in said count, and is insufficient to support a verdict of guilty.

V.

Said District Court erred in denying the motion made at the conclusion of plaintiff's case, and renewed at the conclusion of all of the evidence introduced in said cause, to direct a verdict of not guilty on the charge contained in Count 4 of the Bill of Indictment herein.

The grounds of said motion, and the grounds of said error in denying said motion, were and are: That the evidence adduced does not tend to prove that the defendant is guilty in manner and form as charged in said count, and is insufficient to support a verdict of guilty.

VI.

Said District Court erred in permitting counsel for the plaintiff to cross-examine its witness, Isador Bley Stein, upon the request of the prosecution so to do because "of surprise", in the absence of any showing thereof, or any lawful reason therefor. The witness previous to the prosecution making its request, testified as follows:

"Q. Did you ever at any time discuss it with anyone as to any cards being sent out?

A. Not definitely as to certain cards. I had a conversation with reference to the possibility of postcards going out with Lee Ringer and Mr. McKnight about the 10th of May. We had prepared to send out a newspaper and Mr. McKnight had suggested that we get started on the campaign and we expected to have to add something to the newspaper in the way of handbills and letters or something of that nature. I think he had determined before that what they should be, and a rough draft had been made, and at that time he made a suggestion that perhaps we might be able to use postal cards because they were cheaper. * * * that was the only conversation I had with them directly about postal cards. That conversation I think was the only one I had relative to postal cards."

Thereupon the prosecution inquired as follows:

"Q. Has anyone talked to you about this case in the last couple of days? A. No, sir.

Q. You haven't been talked to by anybody? A. No, sir.

Q. Has Mr. Taylor talked to you? A. No, sir.

Q. He hasn't talked to you about the court room here?

MR. JONES: I object to that as cross examination of his own witness."

Thereupon the District Attorney stated:

"MR. CARR: At this time I am going to ask to be allowed to cross-examine this witness on the ground of suprprise."

Thereupon the following proceedings were had:

"MR. JONES: We object to that at this time for the reason that the witness has shown no hostility whatsoever and has freely, frankly and voluntarily answered the questions, all questions that have been propounded to him. He is a defendant in the law suit and is voluntarily testifying in this case and for that reason I object to the witness being cross examined, a total absence of any reason why he should be permitted to cross examine him.

Q. By the Court: Are you a defendant in any civil suit pending between these other defendants? A. No, sir.

Q. You entered a plea of what we call nolo contendere here in this case?

A. Yes, sir.

Q. And on the date that that plea was entered the United States Attorney, Mr. Carr, was here, was he not?

A. Yes, sir.

Q. And he suggested to the court that the government was willing that the court should receive that plea of nolo contendere, didn't he?

A. Yes, sir.

THE COURT: You may cross examine him, Mr. Carr.

MR. JONES: Exception."

Thereupon counsel proceeded to cross-examine its witness as follows:

"Q. I hand you here government's Exhibit No. 3, certain language there with the letters or the words appearing thereon, 'Alumni Protest League'. What is that League?

A. The League is nothing.

Q. What do you know about that, Mr. Stein?

A. All I know is that is the name of a league, used as a name to put out information against the candidacy of Cunningham."

Q. Do you know where that name came from?

A. Yes, sir, I think this name came from Mr. McKnight's suggestion.

Q. Just give us the date when that suggestion was made?

A. About May 8th or 9th; I think *R*ee Ringer was present.

MR. JONES: I object to that upon the ground that it does not tend to prove or disprove the conspiracy charged in this indictment. * * * The indictment * * * refers to * * * the mailing of a particular postal card and not to the formation or any of its contents. * * * That is not charged in the indictment * * * and * * * any testimony of that kind would be incompetent, irrelevant and immaterial.

THE COURT. The objection is overruled.

MR. JONES: Exception.

Q. Relate the conversation.

A. I had previously arranged with Mr. McKnight on the preparation of a newspaper and Mr. McKnight sug-

gested that we mail something or send out handbills earlier in the campaign, that the newspaper would take considerable time to prepare, and he asked me if I would, if I would see to the sending out of letters telling about the campaign. He knew that I had gone to the university and that I had known Mr. Cunningham at the time he was manager there and the facts that I told him about as to his mismanagement of the affairs and that those facts should be known to all of the voters, and at the time he asked me I told him that my name wouldn't mean anything signed to a letter, just a waste of postage, and at that time he suggested that since Lee Ringer and myself and the girl who was there that I had sent for a job were all graduates of the university perhaps we should form an association and use a name which would become or would be effective in that particular group, and I told him that I would not, that so far as the Alumni Association was concerned they were all for Cunningham and there was no percentage in trying to make up a league of alumni, and at that time he suggested it would only be a protest league, that no one would know he was in it, that he was not publishing any of the members, and we might as well call it an alumni association.

Q. Anything further said as to taking an office location for that organization?

A. Yes, sir, He said that there would have to be some form of dignity to it if it was going to be an organization. He asked me what was my address downtown because he said we could use the address down there, and naturally the building there was at 215 West Seventh Street, the Bartlett Building, and he said, 'So far as the League is concerned can't we use that?' and I told him it was the

number of the building, and so far as I was concerned that they were welcome to it, that they had 400 rooms there, and that it didn't make any difference to me what it was used for.

Q. Was the name used in the campaign?

A. That name was used.

Q. In what way was it used?

A. It was used the way it was used there on this card, apparently was used.

Q. Did you know what was the way it was going to be used?

A. The only way I knew it was used it was used for sending some of these cards, they used that same name for them.

Q. Did you have any conversation with Mr. McKnight at any time later with reference to any postal cards or any post cards that had been mailed or might have been mailed?

A. Yes, I had a couple of conversations after this, that is, after we heard the postal cards went out?

Q. Who was present at that time?

A. That I can't recall because I don't remember exactly the conversation.

Q. Were you present?

A. Yes, sir.

Q. Who else?—

A. I don't recall.

Q. Was Mr. McKnight present?

A. Yes, sir.

Q. Was Mr. Taylor present? .

A. I don't think so. I don't believe he was there.

Q. About what was the date of that conversation?

A. It was around the time these cards were—I received one of these cards approximately around May 20th.

Q. All right, now; relate the conversation.

A. I went down to the building where I was located and I had received 50 different calls from different people wanting to know why I was opposed to the university and why I was dragging the university into a political squabble, and Cunningham called up, and two or three people called up telling me what they were going to do and what I had done, and so forth, and I spoke to Mr. McKnight, telling him that apparently something was wrong somewhere because people all thought that I was financing a campaign against the university, that we had had a lot of people in the office there, one man posing as a postal inspector, and I understand people had made threats of what they were going to do with the Grand Jury, and so on, and I told them that so far as I was concerned I was getting out of the campaign, I was through, and I told him that it was a fine mess so far as I was concerned.

Q. Was there any further conversation?

A. I don't think so.

Q. Did Mr. McKnight have anything to say?

A. No, sir; only that he was sorry he had caused me any inconvenience. He said he didn't think any wrong had been done, and so far as he was concerned he didn't feel I had done anything myself in any way to get me in bad with the university.

Q. Was Mr. Taylor at the office at that time, at any place in the office?

A. Well, to be very truthful I don't remember Mr. Taylor around at that time.

Q. Well, now, Mr. Stein, will you look again at Government's Exhibit No. 3, at the subject matter, and state just what portion of that subject matter that you yourself prepared?

A. Well, together with Mr. McKnight and Lee Ringer, the three of us prepared all of the matter that is on there except perhaps some of the phraseology.

Q. Read the part that you prepared, Mr. Stein.

A. It says. 'Many people have been misinformed and believe that Stephen W. Cunningham, candidate for Council, from the Third District, is the Graduate Manager of the University of California at Los Angeles. In view of the fact that he is in truth not a gradua*g*e of our university we believe that the erroneous impression should be corrected.' I prepared that information.

Q. What part of it did M*c*. McKnight prepare?

A. Part of the discussion that occurred was relative to the idea that the reading matter was not strong enough and the other phase should be inserted.

(Question read.)

A. May I explain, at the time we had prepared the other part, I gave a copy to Lee Ringer and Mr. McKnight—he asked about the bids on the printing and Mr. McKnight suggested to check through the matter again, he said that he didn't think it was strong enough, that it didn't say anything, and at that time suggested we should say something about his management or mismanagement, and at the time that we had the conversation he said that we had better put in something about his not being a good manager of the funds, and he inserted this, 'Since his gross mismanagement of finances there has led to his dismissal'.

Q. Mr. McKnight prepared that there himself?

A. Yes, sir, I think so, that part."

VII.

Said District Court erred to the prejudice of the defendant when upon objection to plaintiff cross-examining its own witness, Isador Bley Stein, the court by its questions placed before the jury the fact that the witness Isador Bley Stein had entered a plea of nolo contendere to the indictment herein. Said questions asked by the court were as follows:

"BY THE COURT: Are you a defendant in any civil suit pending between these other defendants?

A. No, sir.

Q. You entered a plea of what we call nolo contendere here in this case?

A. Yes, sir.

Q. And on the date that the plea was entered the United States Attorney, Mr. Carr, was here, was he not?

A. Yes, sir.

Q. And he suggested to the court that the government was willing that the court should receive that plea of nolo contendere, didn't he?

A. Yes, sir.

THE COURT: You may cross examine him, Mr. Carr.

MR. JONES: Exception."

VIII.

Said District Court erred in refusing to charge the jury as requested in defendant's Instruction No. 49:

"You are instructed that you cannot find the defendant McKnight guilty on a mere suspicion, and evidence of mere relationship between him and other defendants or persons not named in this indictment does not establish that there was a conspiracy. In order to find the defendant McKnight guilty you must find that he intentionally participated in the transaction and that he had an evil motive in having said post cards, identified as Exhibits 2 to 5, inclusive, mailed out, and unless you so find your verdict must be not guilty as to the defendant McKnight."

The failure to give said instruction upon the conclusion of the instructions to the jury was duly excepted to.

IX.

Said District Court erred in refusing to charge the jury as requested in defendant's Instruction No. 40:

"The jury is instructed that the presumption of innocence is not a mere f*ro*m to be disregarded by the jury at pleasure, but it is an essential substantial part of the law of the land and binding on the jury in this case as in all criminal cases and it is the duty of the jury to give the defendant in this case the full benefit of this presumption, and to acquit the defendant unless evidence in the case convinces the jury of his guilt as charged beyond all reasonable doubt."

The failure to give said instruction upon the conclusion of the instructions to the jury was duly excepted to.

X.

Said District Court erred in refusing to charge the jury as requested in defendant's Instruction No. 21:

"The presumption of innocence goes with the defendant throughout the whole trial, even till the verdict is rendered, and this presumption of innocence outweighs and overbalances all suspicions and suppositions, and can only be destroyed by proof beyond a reasonable doubt."

The failure to give said instruction upon the conclusion of the instructions to the jury was duly excepted to.

XI.

Said District Court erred in refusing to charge the jury as requested in defendant's Instruction No. 50:

"You are instructed before you can find the defendant McKnight guilty of Count One in the indictment that you must be satisfied from all of the evidence beyond a reasonable doubt that the defendant had actual knowledge and acquiesced and approved on the act of mailing said post cards, being Exhibits 2 to 5, inclusive, out, and that you cannot find him guilty unless the evidence convinces you beyond a reasonable doubt that there was an agreement to mail said Exhibits 2 to 5 out, and put the printed matter contained upon the post card upon the same. If the evidence does not satisfy you beyond a reasonable doubt that the defendant McKnight agreed with the other defendants named in the indictment or with *orders,* that said printed matter now contained in said Exhibits 2 to 5 should be printed upon a post card on said exhibits and mailed out, then the defendant McKnight would not be guilty and you are further instructed that the defendant

McKnight is not responsible for the conduct of other parties, if any there shall be found by you who mailed said post cards out, unless the evidence convinces you beyond a reasonable doubt that he did have knowledge and approve and acquiesce in the mailing out of said post cards."

The failure to give said instruction upon the conclusion of instructions to the jury was duly excepted to.

XI.

Said District Court erred in refusing to charge the jury as requested in defendant's Instruction No. 30:

"A reasonable doubt is that state of the case which, after an entire comparison and consideration of all the evidence, leaves the mind of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. It is not sufficient to establish a probability, even though a strong one; arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary, but the evidence must go further and establish the truth of the fact to a reasonable and moral certainty—a certainty that convinces and directs the understanding and satisfies the reason and judgment of the jurors, who are bound to act upon it conscientiously."

The failure to give said instruction upon the conclusion of instructions to the jury was duly excepted to.

XII.

Said District Court erred in refusing to charge the jury as requested in defendant's Instruction No. 22:

"You are instructed that the presumption of innocence with which the defendant is at all times clothed is not a mere form to be disregarded by you at pleasure, but that it is an essential, substantial part of the law and binding on you in this case, and it is your duty in this case to give the defendant the full benefit of this presumption, and to acquit this defendant unless the evidence in the case convinced you of his guilt as charged beyond all reasonable doubt."

The failure to give said instruction upon the conclusion of instructions to the jury was duly excepted to.

CONCLUSION

WHEREFORE, the said James S. McKnight, by reason of the errors aforesaid, prays that the said judgments and sentences against and upon him, the said James S. McKnight, may be reversed and held for naught.

James S. McKnight
Defendant

Otto Christensen
Counsel for said James S. McKnight

[Endorsed]: Filed Feb 8-1935 R. S. Zimmerman, Clerk By Thomas Madden, Deputy Clerk.

[Title of Court and Cause.]

BOND PENDING DECISION ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, JAMES S. McKNIGHT, as principal, of the City of Los Angeles, State of California, and Velma R. McKnight and Bessie Louise Hewitt as sureties, all of the City of Los Angeles, California, are jointly and severally held and firmly bound unto the United States of America in the sum of Five Thousand Dollars ($5000) for the payment of which said sum we and each of us bind ourselves, our heirs, executors, administrators and assigns.

Signed and sealed and dated this 20th day of December, 1934.

WHEREAS, on the 19th day of December, 1934, at a term of the District Court of the United States, in and for the Southern District of California, Central Division, in an action pending in said Court, between the United States of America, plaintiff, and James S. McKnight, et al, Defendants, a judgment and sentence was made, given and rendered and entered against the said James S. McKnight in the above entitled action, wherein he was convicted of a violation of Section 212, Federal Penal Code, and Section 37, Federal Code—Conspiracy to violate Section 212 of the Federal Penal Code, and

WHEREAS, judgment was rendered against the said defendant in said action and he was by said judgment sentenced to be imprisoned in the Los Angeles County Jail, Los Angeles, California, for a period of 60 days and to pay a fine unto the United States of America in the sum

of $500.00, and stand committed until said fine shall have been paid, on the first count and was sentenced to be imprisoned in the Los Angeles County jail, Los Angeles, California, for a period of 6 months on each of counts 2, 3 and 4 of the indictment, to run concurrently, and suspended for two years on probation, and

The said James S. McKnight having filed a Notice of Appeal wherein and whereby he has appealed from said judgment and sentence to the United States Circuit Court of Appeals for the Ninth Circuit, and,

WHEREAS, the said James S. McKnight has been admitted to bail pending the decision upon said appeal in the sum of $5000.00,

NOW THEREFORE, the conditions of the above obligation are such that if the said James S. McKnight shall appear, either in person or by his attorney in the United States Circuit Court of Appeals for the Ninth Circuit, on such day or days as may be appointed for the hearing of said cause in the said court and prosecute his appeal, and if the said James S. McKnight shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit, in said cause; and if the said James S. McKnight shall surrender himself in execution of said judgment and sentence, if the said judgment and sentence be affirmed by the United States Circuit Court of Appeals, Ninth Circuit; and if the said James S. McKnight shall appear for trial in the District Court of the United States, in and for the Southern District of

California, Central Division, on such day or days as may be appointed for the retrial of the said District Court, and abide by and obey all orders made by the said District Court, if the said judgment and sentence against him be reversed by the United States Circuit Court of Appeals for the Ninth Circuit.

Then this obligation to be void, otherwise to remain in full force, virtue and effect.

James S. McKnight
Principal.
5301 W. 8th St. L. A.

Velma R. McKnight
Bessie Louise Hewitt
Sureties.

UNITED STATES OF AMERICA,

Southern District of California,)
County of Los Angeles) ss.

Velma R. McKnight and Bessie Louise Hewitt

BEING DULY SWORN, EACH FOR HERELF DEPOSES AND SAYS: That she is a freeholder in said District, and is worth the sum of Five Thousand Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities and own the property listed below, and owns property listed below of the value set out.

Subscribed and sworn to before me this 20th day of December, 1934.

[Seal] Bessie Louise Hewitt
Velma R. McKnight

David B. Head
U. S. Commissioner
McKnight

Lot 13—Tract 3821 Bk. 42 p. 15—L. A. County value $15,000 clear of encumbrances 3301 W. 8 St. L. A.

Hewitt

Lot 158 Tract 7615 Maps 85—15—17—value $15,000 encumbrances $5,000 109 N. La Peer Drive L. A.

I hereby certify that I have personally examined the sureties on the within bond and find them good and sufficient

[Seal] David B. Head
U. S. Commissioner

Bond approved this 20th day of December 1934
Paul J McCormick
Judge.

[Endorsed]: Filed Dec. 20, 1934 R. S. Zimmerman, Clerk. By B. B. Hansen, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PRAECIPE
For Transcript of Record

TO THE CLERK OF SAID COURT:

Please issue a transcript of the record to the United States Circuit Court of Appeals, Ninth Circuit, in the above entitled cause, and include the following:

1. Indictment
2. Statement of docket entries.
3. Demurrer of Defendant McKnight and ruling thereon.
4. Plea of Defendant McKnight.
5. Verdict of the Jury.
6. Judgment and sentence of the court.
7. Bill of Exceptions.
8. Stipulation and Order regarding certifying exhibits.
9. Stipulation and Order extending time for bill of Exceptions and Assignment of Errors.
10. Notice of Appeal.
11. Assignment of Errors.
12. Bond on Appeal.
13. Praecipe for Transcript of Record on Appeal.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals, Ninth Circuit, and to be filed in the office of the U. S. Circuit Court of Appeals, Ninth Circuit, as required by law.

Dated this 7th day of February, 1935.

Otto Christensen

Attorney for defendant and Appellant
James S. McKnight

[Endorsed]: Filed Feb 8-1935 R. S. Zimmerman, Clerk By Thomas Madden, Deputy Clerk.

[Title of Court and Cause.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 137 pages, numbered from 1 to 137 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the statement of docket entries; indictment; demurrer; order overruling demurrer, and plea of not guilty of defendant McKnight; minute order of December 19, 1934, containing verdict, judgment and sentence; bill of exceptions; stipulation re exhibits; order re exhibits; stipulation and order extending time to file bill of exceptions; notice of appeal; assignment of errors; bond on appeal, and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is $ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to................ and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this................ day of March, in the year of Our Lord One Thousand Nine Hundred and Thirty-five and of our Independence the One Hundred and Fifty-ninth.

R. S. ZIMMERMAN,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By

Deputy.